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NOTTING TRUCK & CASTER
BRD ITM/COM AUTH/PERMIT
REQUEST FOR APPROVAL OF A
RESPONSE ORDER BY CONSENT
SEPTEMBER 22, 1987

MINNESOTA POLLUTION CONTROL AGENCY
Solid and Hazardous Waste Division
Agenda Item Control Sheet

Agenda # 18

MEETING DATE: September 22, 1987 APPEARANCE REQUESTED - YES: NO: X
SCHEDULED TIME:

PREPARED BY: DR RAS Frank Wallner FWW/mkc DATE MAILED : September 11, 1987

SUBJECT: Request For Approval Of A Response Order By Consent Between The MPCA
And The Nutting Company Regarding Ground Water Contamination
Associated With The Nutting Truck and Caster Hazardous Waste Site,
Faribault, Rice County

LOCATION: Faribault Rice
CITY COUNTY

TYPE OF ACTION:

Permit	<u> </u>	Request For Hearing	<u> </u>	New	<u> </u>
Stipulation	<u> </u>	Request for legal action	<u> </u>	Modification	<u> </u>
Contract	<u> </u>	Variance request	<u> </u>	Extension	<u> </u>
Policy	<u> </u>	Rulemaking	<u> </u>	Revocation	<u> </u>
Information	<u> </u>	Administrative order	<u> </u>	Other	<u> </u>
Consent Order	<u>X</u>	Request for Response Action	<u> </u>		
Negative Declaration	<u> </u>				

RECOMMENDED ACTION:

Issuance Approval X No action needed
Denial Authorization

ISSUE STATEMENT: On September 27, 1983 the Minnesota Pollution Control Agency (MPCA) issued a Request for Response Action to the Nutting Company (Nutting) which required Nutting to conduct a Remedial Investigation/Feasibility Study (RI/FS) regarding ground water contamination associated with the Nutting Truck and Caster Hazardous Waste Site (Nutting Site). On April 26, 1984 the MPCA entered into a Response Order By Consent (Order) with Nutting which required Nutting to complete a RI/FS. Nutting has completed a RI/FS and has proposed a Response Action Plan (RAP). On March 24, 1987 the MPCA issued a second RFRA for implementation of the RAP. The Nutting Company and MPCA subsequently negotiated a Consent Order regarding implementation of the RAP to address ground water contamination associated with the Nutting Site.

ATTACHMENTS:

1. Response Order By Consent with Response Action Plan Exhibit
2. Site Location Map

MINNESOTA POLLUTION CONTROL AGENCY
Solid and Hazardous Waste Division
Site Response Section

Request For Approval Of A Response Order By Consent Between The MPCA
And The Nutting Company Regarding Ground Water Contamination
Associated With The Nutting Truck and Caster Hazardous Waste Site,
Faribault, Rice County

September 22, 1987

Issue Statement

On September 27, 1983 the Minnesota Pollution Control Agency (MPCA) issued a Request for Response Action to the Nutting Company (Nutting) which required Nutting to conduct a Remedial Investigation/Feasibility Study (RI/FS) regarding ground water contamination associated with the Nutting Truck and Caster Hazardous Waste Site (Nutting Site). On April 26, 1984 the MPCA entered into a Response Order By Consent (Order) with Nutting which required Nutting to complete a RI/FS. Nutting has completed a RI/FS and has proposed a Response Action Plan (RAP). On March 24, 1987 the MPCA issued a second RFRA for implementation of the RAP. The Nutting Company and MPCA subsequently negotiated a Consent Order regarding implementation of the RAP to address ground water contamination associated with the Nutting Site.

I. History Underlying this Consent Order:

The Nutting Company (Nutting) produced a variety of hand carts and caster wheels over the past 94 years at its plant in Faribault (Nutting Site). The map attached to this Board Item as Attachment 2 shows the location of the Nutting Site. Beginning in 1959 Nutting began disposing of waste materials, including waste solvents, in a seepage pit on Nutting property. In response to a 1979 notice of non-compliance issued by the Minnesota Pollution Control Agency (MPCA) staff, Nutting excavated the contents of the pit and backfilled the pit with clean fill, and capped the area with an impervious material thereby removing the main source of ground water contamination. Samples collected by Nutting at the time of the excavation confirmed that releases from the pit to the ground water are from the Nutting facility. The ground water is contaminated primarily by 1,1,2 trichloroethylene (TCE), and to a lesser extent by cadmium, lead, chromium, methylene chloride, and xylene. TCE in ground water was detected at concentrations of up to 570 parts per billion (ppb), and is the main contaminant of concern.

On September 27, 1983 the MPCA made the necessary determinations and issued a Request for Response Action (RFRA) with respect to the release of hazardous substances at and around the Nutting Site. The RFRA required Nutting to conduct a Remedial Investigation/Feasibility Study (RI/FS) and provided a basis for negotiating a Consent Order (Order).

On April 26, 1984 the MPCA entered into an Order with Nutting which required Nutting to conduct a Remedial Investigation (RI), and if deemed necessary by the Commissioner, a Feasibility Study. The Order did not require implementation of Response Actions.

Nutting has completed its obligations under the April 26, 1984 Consent Order. The RI Final Report concluded that groundwater in the alluvial and upper St. Peter aquifer located beneath the Nutting Site was contaminated by TCE at concentrations up to 570 ppb. TCE was found at trace concentrations beyond the Nutting Site Property boundary. The RI Final Report also concluded that Response Actions are necessary and reasonable to mitigate localized TCE ground water contamination and thereby protect downgradient aquifers for use as a drinking water supply. The RI Final Report was approved by the MPCA Commissioner by letter dated October 15, 1986. Nutting also submitted a Feasibility Study (FS) which analyzed alternative remedies and documents selection of a ground water pump out system as the most appropriate response action. The FS submitted by Nutting was also approved by the MPCA Commissioner's October 15, 1986 letter.

On February 6, 1987 Nutting submitted a proposed Response Action Plan (RAP) which details a ground water pump out system. On March 24, 1987 the MPCA approved the RAP and issued a second RFRA which required Nutting to implement the RAP.

II. Discussion:

Nutting and the MPCA staff have successfully negotiated the terms of the proposed Order attached to this Board Item as Attachment 1. The proposed Order requires Nutting to accomplish the following:

A. Response Action Implementation

The attached Exhibit A to the Order is the RAP which was approved by the MPCA Board on March 24, 1987. The RAP details the proposed ground water pump out system. The purpose of the RAP is to mitigate migration from the Nutting site of contaminated ground water in the alluvium and upper St. Peter aquifers and thereby ensure protection of the downgradient aquifer for future use as a drinking water supply. The RAP specifically requires Nutting to (1) pump out contaminated ground water until a concentration of 50 ppb of TCE is consistently achieved in the alluvium at the Nutting property boundary, and (2) monitor ground water to assess the effectiveness of the pump out system.

B. Reimbursement of Expenses

Part XX of the Order requires Nutting to pay \$7,000 into the Minnesota Environmental Response, Compensation and Compliance Fund (Fund) as reimbursement of the MPCA's expenses.

III. CONCLUSIONS

Nutting and MPCA staff have met and negotiated the attached proposed Order. The MPCA staff believe that implementation of the Response Action, as detailed in Exhibit A to the Order, is the most appropriate response action to be taken at this time to protect the public health, welfare and environment of Minnesota concerning the Nutting Site.

IV. RECOMMENDATION

The MPCA staff recommends that the MPCA Board approve the Response Order By Consent with Nutting by adopting the suggested staff resolution on the following page.

SUGGESTED STAFF RESOLUTION

BE IT RESOLVED, that the Minnesota Pollution Control Agency approves and adopts the Response Order By Consent between the Minnesota Pollution Control Agency and the Nutting Company which provides for the implementation of the Response Action Plan, Routine Monitoring and Reimbursement of the Minnesota Pollution Control Agency's costs associated with the Nutting Site in Faribault, Minnesota.

BE IT FURTHER RESOLVED, that in approving and adopting the Response Order By Consent the Minnesota Pollution Control Agency adopts the jurisdictional determinations and factual findings set forth in Parts I and III of the Response Order By Consent and the factual determinations and reasoning in the Minnesota Pollution Control Agency staff's memorandum dated September 22, 1987 which accompanied the Minnesota Pollution Control Agency staff's recommendation to the Minnesota Pollution Control Agency Board.

BE IT FURTHER RESOLVED that the Chairman and the Commissioner are hereby authorized to execute the Order on behalf of the Minnesota Pollution Control Agency.

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the matter of
Nutting Truck and Caster Hazardous Waste Site

RESPONSE ORDER
BY CONSENT

Proceedings Under Sections 17
and 18 of the Minnesota
Environmental Response and
Liability Act, Minn. Stat. Ch. 115B.

Based on the information available to the parties on the effective date of this RESPONSE ORDER BY CONSENT, and without trial or adjudication of any issues of fact or law, the parties hereto agree and it is hereby ordered as follows:

I.

Jurisdiction

This RESPONSE ORDER BY CONSENT (Order) is issued pursuant to the authority vested in the Minnesota Pollution Control Agency (MPCA) by the Environmental Response and Liability Act (ERLA), Minn. Stat. Ch. 115B, and by Minn. Stat. Chs. 115 and 116.

On the basis of the results of the testing and analyses described in the Statement of Facts, infra, and MPCA files and records, the MPCA has determined that (1) the Nutting Truck and Caster Hazardous Waste Site located in Faribault, Minnesota (Nutting Site) constitutes a facility within the meaning of Minn. Stat. § 115B.02, Subd. 5; (2) the wastes and substances found or disposed of at the Nutting Site are hazardous substances within the meaning of Minn. Stat. § 115B.02, Subd. 8 and 9; (3) there have been one or more releases and continue

to be threatened releases, within the meaning of Minn. Stat. § 115B.02, subd. 15, of these hazardous substances from the Nutting Site; (4) with respect to those releases, the Nutting Company (Nutting) is a responsible person within the meaning of Minn. Stat. § 115B.03; (5) the actions to be taken pursuant to this Order are reasonable and necessary to protect the public health or welfare or the environment; and (6) the time periods for beginning and completing the actions required by this Order are reasonable.

II.

Parties

This Order shall apply to and be binding upon the following parties:

- A. The Nutting Company; and,
- B. The Minnesota Pollution Control Agency.

III.

Statement of Facts

For purposes of this Order, the following constitutes a summary of the facts upon which this Order is based. None of the facts related herein shall be considered admissions by either party with respect to any claims unrelated to or persons not a party to this Order.

A. The Nutting Site is located at 1221 West Division Street in Faribault, Minnesota. A map of the Nutting Site is attached as Attachment 1.

B. The Nutting Site is listed on the National Priority List with a Hazard Ranking System score of 38.

C. Nutting produced a variety of hand carts and caster wheels over the past 94 years at its plant in Faribault. The manufacture of these products lead to the generation of waste solvents.

D. Beginning in 1959 Nutting began disposing of waste materials, including waste solvents, in a disposal pit located on the southern tip of Nutting property. In response to a 1979 notice of non-compliance, Nutting excavated the contents of the pit, backfilled the pit with clean fill, and capped the area with an impervious material thereby removing the main source of ground water contamination.

E. Samples collected by Nutting at the time of the excavation confirmed that releases from the disposal pit to the ground water are from the Nutting facility. The ground water is contaminated primarily by 1,1,2 trichloroethylene (TCE), and to a lesser extent by cadmium, lead, chromium, methylene chloride, and xylene. TCE in ground water was detected at concentrations of up to 570 parts per billion (ppb), and is the main contaminant of concern.

F. Beginning in 1982, analysis of Faribault municipal water supply wells confirmed the presence of TCE. This discovery led MPCA staff to place a high priority on defining the extent and magnitude of contaminated ground water originating from the Nutting property and other sources.

G. On September 27, 1983 a Request for Response Action (RFRA) was issued to Nutting, and on April 26, 1984 a Consent Order (Order) was executed which required Nutting to conduct a Remedial Investigation (RI) to assess the extent and magnitude of ground water contamination, to determine whether the Nutting Site contributed to contamination of the Faribault municipal water supply wells and to reimburse the MPCA for its expenses. Nutting has fully completed its obligations under the April 26, 1984 Order.

H. The April 26, 1984 Consent Order required the Nutting Company to conduct additional Remedial Investigations to determine the extent of contamination originating from the company's property and to determine whether

the Company was or was not the source of trichloroethylene and other hazardous substances detected in the Faribault Municipal wells beginning in 1982. Nutting submitted a RI Final Report, the data from which indicates that contamination from the Nutting property is not the source of TCE or other hazardous substances measured at the Faribault municipal water supply wells. The RI concluded that response actions are needed to mitigate localized TCE ground water contamination. The RI Final Report was approved by the MPCA Commissioner by letter dated October 15, 1986.

I. Nutting submitted a Feasibility Study (FS) which analyzed alternative remedies and documents selection of a ground water pump out system as the most appropriate response action.

J. On February 6, 1987 Nutting submitted a proposed Response Action Plan (RAP) which details the installation and operation of the ground water pump out system. A second RFRA was issued on March 24, 1987 which formally set forth and approved the RAP.

IV.

Definitions

Unless otherwise explicitly stated, the definitions provided in Minn. Stat. Ch. 115B shall control the meaning of the terms used in this Order.

V.

Scope of Order

This Order shall govern the following matters:

A. Implementation of Response Actions as described in Part VI and Exhibit A. to this Order; and

B. Reimbursement of the MPCA's costs.

These matters are set forth in more specific detail in Parts VI and VII, and Exhibit A to this Order. In the event of any ambiguity or inconsistency between Parts VI and VII and Exhibit A to this Order, the Exhibit shall govern.

Matters other than those described above are not within the scope of this Order.

VI.

Response Action Implementation

Nutting shall implement the Response Action (RA) in accordance with the requirements and time schedules set forth in Exhibit A to this Order. Exhibit A is appended to and made an integral and enforceable part of this Order. The purpose for implementing the selected RA is to abate or minimize the release or threatened release of hazardous substances associated with the Nutting Site.

VII.

Review and Approval of Submittals

The review of each submittal, document, report, or schedule (collectively referred to hereafter as "Submittal") which is required to be submitted to and reviewed by the MPCA Commissioner shall be as follows:

A. The MPCA Commissioner shall review each Submittal made by Nutting as required by this Order within thirty (30) calendar days of receipt and notify Nutting in writing by the thirty-first calendar day, or the first working day thereafter, of his approval, disapproval, or modification of the Submittal. In the event the Submittal is approved, it shall become an integral and enforceable part of this Order. In the event the Submittal is disapproved in whole or part, the MPCA Commissioner shall notify Nutting and shall state the necessary amendments or revisions and the reasons therefor. In the event that the Submittal is modified, the MPCA Commissioner shall notify Nutting of the specific modification(s) made to the Submittal and the reason(s) therefor.

B. Within twenty-one (21) calendar days of receipt of any notice of disapproval or modification, or on the first working day thereafter, Nutting shall (1) submit revisions to correct inadequacies, (2) respond to the modifications or (3) state in writing the reasons why the Submittal, as originally submitted, should be approved.

C. If, within twenty-one (21) calendar days from the date of Nutting's submission under paragraph B, above, or the first working day thereafter, the parties have not reconciled all issues with respect to the Submittal, the MPCA Commissioner shall make final modifications of the Submittal as he deems necessary. Subject to the provisions of Part VIII, final modifications made by the MPCA Commissioner shall become integral and enforceable parts of this Order.

D. All Submittals or modifications thereto shall be technologically feasible and in accordance with sound engineering practices.

E. The MPCA and Nutting shall provide the opportunity to consult with each other during the review of Submittals or modifications.

F. In reviewing all Submittals, making any final modifications or issuing any order under Part VIII the MPCA shall comply with the requirements of Minn. Stat. § 116.07, subd. 6 (1986).

VIII.

Resolution of Disputes

If a dispute arises as to any part of this Order, including any final modification or disapproval of Submittals, the procedures of this Part shall apply. In addition, during the pendency of any dispute, Nutting shall continue

to implement those portions of the RA which the MPCA Commissioner determines can be reasonably implemented pending final resolution of the issue(s) in dispute.

A. Nutting shall, within twenty-one days of the date of the MPCA action which lead to the dispute, provide the MPCA Commissioner with a written statement setting forth the dispute and the information which Nutting is relying upon to support its position.

B. Following receipt of Nutting's statement under paragraph A, the MPCA Commissioner shall issue an order with respect to the issue(s) in dispute.

C. Nutting shall, within fourteen (14) days of the date of issuance of the MPCA Commissioner's order, notify the MPCA Commissioner whether Nutting intends to comply with the MPCA Commissioner's order. In the event that Nutting does not notify the MPCA Commissioner within fourteen (14) days of the date of issuance of the MPCA Commissioner's order, Nutting's failure shall be construed as a waiver of its right to challenge the order. In such an event, the MPCA Commissioner's order shall become an integral and enforceable part of this Order.

D. If, within fourteen (14) days of the date of issuance of the MPCA Commissioner's order, Nutting notifies the MPCA Commissioner that it does not intend to comply with the MPCA Commissioner's order, the MPCA shall, within forty-five (45) days of the date that Nutting's notice was received, notify Nutting as to whether the MPCA intends to do any of the work which Nutting has notified the MPCA it will not undertake during the pendency of the dispute or which is in dispute.

E. If the MPCA elects to do any work specifically set forth or required by Exhibit A (RA) pending resolution of the dispute, the MPCA may seek to recover any reasonable and necessary expenses incurred by the MPCA as

provided in Minn. Stat. § 115B.17, Subd. 6 (1986). If the MPCA elects to do any work, there shall be no preenforcement review of the dispute and review of the issue(s) in dispute shall be limited to any cost recovery action which may be brought by the MPCA under Minn. Stat. § 115B.17, Subd. 6 (1986).

F. If the MPCA elects not to do any work required by this Order during the pendency of a dispute, Nutting may bring an action challenging the MPCA Commissioner's order. Any such action must be brought within thirty (30) days of receiving notice that the MPCA does not intend to do the work required by this Order. Review of the MPCA Commissioner's order shall be a de novo proceeding, although it is understood that Nutting shall not challenge the contractual nature of this Order. If Nutting does not file an action challenging the MPCA Commissioner's order within the allotted time period, Nutting's failure shall be construed as a waiver of its right to seek de novo court review and the MPCA Commissioner's order shall become an integral and enforceable part of this Order.

IX.

Permits

A. The implementation of this Order may require the issuance of governmental permits, authorizations or orders (hereinafter referred to as "permit") by the MPCA, other State agencies, or other governmental bodies. This Order is based upon the expectation that the terms and conditions of any necessary permits will be issued consistent with the response actions required by this Order.

B. Nutting shall notify the MPCA Commissioner of all non-MPCA permits which are needed to implement the requirements of this Order as soon as Nutting becomes

aware of the need for the permit. Nutting shall provide the MPCA Commissioner with a copy of all such permit applications at the time that the application is submitted to the governmental body issuing the permit.

C. If a permit is not issued, or is issued or is renewed in a manner which is materially inconsistent with the requirements of the approved RAP or RA(s), Nutting shall notify the MPCA Commissioner of its intention to propose modifications to the RAP or RA(s). Notification by Nutting of its intention to propose modifications shall be submitted within seven (7) calendar days of receipt by Nutting of notification that (1) a permit will not be issued; (2) a permit has been issued or reissued; or (3) a final judicial determination with respect to issuance of a permit has been entered. Within thirty (30) days from the date it submits its notice of intention, Nutting shall submit to the MPCA Commissioner its proposed modifications to the RAP or RA(s) with an explanation of its reasons in support thereof.

D. The MPCA Commissioner shall review and approve, disapprove or modify Nutting's proposed modifications to the RAP or RA(s) in accordance with Part VII of this Order. If Nutting submits proposed modifications prior to a final judicial determination of any appeal taken on a permit needed to implement this Order, the MPCA Commissioner may elect to delay review of the proposed modifications until after such final judicial determination is entered. If the MPCA Commissioner elects to delay review, Nutting shall continue implementation of this Order as provided in Paragraph E. of this Part.

E. During any judicial review of any permit needed to implement this Order or during review of any of Nutting's proposed modifications as provided in Paragraph D. above, and during any subsequent judicial proceedings taken in accordance with the provisions of Part VIII, Nutting shall continue to implement those portions of the RA(s) which the MPCA Commissioner determined can be reasonably implemented pending final resolution of the judicial proceedings.

X.

Creation of Danger

In the event the MPCA Commissioner determines that activities undertaken in implementing or in non-compliance with this Order, or any other circumstances or activities, are creating a danger to the health or welfare of the people on the Nutting Site or in the surrounding area or to the environment, the MPCA Commissioner may order Nutting to stop further implementation of this Order for such period of time as needed to abate the danger or may petition a court of appropriate jurisdiction for such an order.

XI.

Reporting

Nutting shall submit to the MPCA Commissioner written progress reports which describe the actions Nutting has taken during the previous three months (quarter) to implement the requirements of this Order. Progress reports shall also describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall be submitted within ten days from the end of each quarter. The progress reports shall include a detailed statement of the manner and extent to which the requirements and time schedules set out in Exhibit A to this Order is being met. Nutting shall indicate and propose in the quarterly reports any additional activities it believes to be necessary which are not included in the approved RAP and shall describe the impact of the additional activities on the other activities conducted pursuant to this Order. The MPCA Commissioner may, in his discretion, direct that reports be submitted at extended intervals or that no further reports be submitted.

XII.

Notification

Unless otherwise specified, progress reports and any other Submittals made by Nutting pursuant to this Order shall be sent by certified mail, return receipt requested and addressed or hand delivered to:

Frank X. Wallner, Project Manager
Division of Solid and Hazardous Waste
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Documents sent to Nutting shall be addressed as follows unless Nutting specifies otherwise:

Mr. Stewart Shaft
The Nutting Company
840 Hidden Valley
Watertown, S. D. 57201

Ms. Becky Comstock
Dorsey & Whitney
2200 First Bank Place East
Minneapolis, MN 55402

XIII.

Project Managers

The MPCA and Nutting shall each designate a Project Manager and Alternate (hereinafter jointly referred to as Project Manager) for the purposes of overseeing the implementation of this Order. Within ten (10) days of the effective date of this Order, Nutting shall notify the MPCA Commissioner of the name and address of its Project Manager and Alternate. The MPCA Project Manager is Frank X. Wallner; the MPCA Alternate is Sandra Forrest. Either party may change its designated Project Manager by notifying the other party, in writing, of the change. To the maximum extent possible, communications between Nutting and the MPCA concerning the terms and conditions of this Order shall be

directed through the Project Managers. Each Project Manager shall be responsible for assuring that all communications from the other Project Manager are appropriately disseminated and processed.

For the purpose of overseeing and implementing this Order, the Project Managers shall have the authority to (1) take samples or direct that samples be taken; (2) direct that work stop for a period not to exceed 72 hours whenever a Project Manager determines that activities at the Nutting Site may create a danger to public health or welfare or the environment; (3) observe, take photographs and make such other reports on the progress of the work as the Project Manager deems appropriate; (4) review records, files and documents relevant to this Order; and (5) make or authorize minor field modifications in the RA(s) or in techniques, procedures or design utilized in carrying out this Order which are necessary to the completion of response actions. Any field modifications shall be approved orally by both Project Managers. Within seventy-two (72) hours following the modification, the Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefor and shall provide or mail a copy of the memorandum to the other Project Manager.

The MPCA and Nutting Project Managers shall either be on-site or available on call during all hours of work at the Nutting Site. The absence of any Project Manager from the Nutting Site shall not be cause for stoppage of work.

XIV.

Sampling and Data Availability

The MPCA Commissioner and Nutting shall make available to each other the results of sampling, tests or other data generated by either party, or on their behalf, with respect to the implementation of this Order. At the request of the

MPCA Project Manager, Nutting shall allow split or duplicate samples to be taken by the MPCA during sample collection conducted during the implementation of this Order. Nutting's Project Manager shall endeavor to notify the MPCA Project Manager not less than ten (10) days in advance of any sample collection. If it is not possible to provide ten (10) days prior notification, Nutting shall notify the MPCA Project Manager as soon as possible after becoming aware that samples will be collected.

XV.

Retention of Records

Nutting shall preserve for a minimum of three (3) years after termination of this Order all records and documents in its possession or in the possession of its divisions, employees, agents accountants, contractors or attorneys which relate in any way to the presence of hazardous substances at the Nutting Site or to the implementation of this Order despite any document retention policy to the contrary.

XVI.

Access

The MPCA or its authorized representatives shall have authority to enter the Nutting Site at all reasonable times for the purposes of inspecting records, operating logs, contracts and other documents relevant to implementation of this Order; reviewing the progress of Nutting in implementing this Order; conducting such tests as the MPCA Commissioner or MPCA Project Manager deem necessary; and verifying the data submitted to the MPCA by Nutting. If records required to be

retained under this Order are kept at a location other than the Nutting Site, the MPCA or its authorized representatives shall have access to such other location at all reasonable times for the purposes of inspecting the records. Nutting shall honor all reasonable requests for such access by the MPCA conditioned only upon presentation of proper credentials.

Nutting shall use its best efforts to obtain access to property not owned by Nutting upon which Nutting, its contractors, and the MPCA will be required to enter or conduct work in order to carry out the terms of this Order. Nutting shall be responsible for restoring to substantially its original condition any property to which access has been granted. Access agreements obtained by Nutting under this Part shall provide authority for Nutting and its assigns, the MPCA, and their authorized employees, agents or representatives to enter the Nutting Site and all other property upon which work is to be done under this Order at all reasonable times for the purposes of: implementing the RAP; reviewing the progress of implementation of the RAP; conducting such tests as the MPCA Commissioner or his Project Manager or Nutting's Project Manager deem necessary; and verifying data submitted.

With respect to property upon which monitoring wells, pumping wells, or treatment facilities or other response actions are located the access agreements shall also provide that no conveyance of title, easement, or other interest in the property shall be consummated without provision for the continued operation of the monitoring wells, pumping well or treatment facilities or other response actions installed on the property pursuant to this Order. Access agreements shall also provide that the owners of the property subject to the access

agreement shall notify Nutting and the MPCA Commissioner, by certified mail, prior to any conveyance of the property, of the owners' intent to convey any interest in the property and of the provision made for continued access. No such conveyance shall occur for at least thirty (30) days after receipt of such notice.

If Nutting is unable to obtain access using its best efforts, the MPCA agrees to use its authority under the statutes and regulations it administers to assist Nutting, its contractors, employees, or assigns in obtaining access to property necessary for the implementation of this Order. If Nutting, its contractors, employees, agents or assigns shall be designated agents of the State in order to obtain access under Minn. Stat. § 115B.17, Subd. 4, such designation shall be for the sole purpose of obtaining access to property for purposes of taking investigative or response actions necessary for the implementation of this Order. In the event of such designation, Nutting and its assigns shall indemnify and save and hold the State, its agents, and employees harmless from any and all claims or causes of actions arising from or on account of the performance of such investigative or response actions by Nutting, its contractors, employees, agents or assigns.

XVII.

Other Claims

Nothing herein is intended to bar or release any claims, causes of action or demands in law or equity by or against any person, firm, partnership or corporation not a signatory to this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, disposal or release of any hazardous substances at, to, or from the Nutting Site.

The MPCA shall not be held as a party to any contract entered into by Nutting to implement the requirements of this Order.

XVIII.

Other Applicable Laws

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. In the event there is a conflict in the application of federal or state or local laws or regulations, the more stringent of the conflicting provisions shall apply.

XIX.

Confidential Information

Nutting may assert a business confidentiality claim covering all or part of the information requested by this Order pursuant to Minn. Stat. §§ 13.03, 13.37, 115B.17, Subd. 5, and 116.075. Analytical data shall not be claimed as confidential by Nutting. Information determined to be confidential by the MPCA Commissioner shall be afforded protection as provided in Minn. Stat. Ch. 13 and §§ 115B.17, Subd. 5 and 116.075. If no such claim accompanies the information when it is submitted to the MPCA Commissioner, the information may be made available to the public by the MPCA Commissioner without further notice to Nutting.

XX.

Recovery of Expenses

Nutting shall pay into the Environmental Response, Compensation and Compliance Fund of the Treasury of the State of Minnesota the sum of \$7,000, as reimbursement of the MPCA's past (from January 1, 1987) and future oversight expenditures incurred in connection with the Nutting Site. Payment of this sum shall be in full and complete satisfaction of all past monetary claims of the MPCA. This payment is not intended to limit the MPCA's right to recover future expenses incurred in enforcement of this Order. Payment shall be made as

follows: Two Thousand Dollars (\$2,000) within 30 days of the effective date of this Order; One Thousand Dollars (\$1,000) within six (6) months of the effective date of this Order; Two Thousand Dollars (\$2,000) by December 31, 1988 and Two Thousand Dollars (\$2,000) by December 31, 1989. Payments shall be sent to John Retzer, Accounting Director, MPCA, 520 Lafayette Road N., St. Paul, Minnesota 55155, and a copy of the letter which accompanied payment shall be sent to the MPCA Project Manager.

XXI.

Liability Insurance

Within 30 days of the effective date of this Order, Nutting shall provide the MPCA Commissioner with current certificates of insurance certifying coverage for general liability with minimum limits of One Million Dollars (\$1,000,000) per occurrence, exclusive of legal defense costs, for bodily injury. The insurance coverage shall provide that it cannot be cancelled for any reason except after thirty (30) days notice to the MPCA Commissioner. These insurance limits are not to be construed as maximum limits. Nutting is solely responsible for determining the appropriate amount of insurance it should carry for injuries or damages resulting from its activities in the implementation of this Order.

XXII.

Amendment of Order

This Order may only be amended by a written agreement between Nutting and the MPCA.

XXIII.

Covenant Not to Sue

In consideration for Nutting's performance of the terms and conditions of this Order, and based on the information known to the parties on the effective date of this Order, the MPCA agrees that compliance with this Order shall stand in lieu of any administrative, legal and equitable remedies available to

the MPCA regarding implementation of Nutting's Response Actions, except that nothing in this Order shall preclude the MPCA from exercising any administrative, legal and equitable remedies available to it to require additional response actions by Nutting in the event that the implementation of the requirements of this Order are insufficient to remedy the release or threatened release of hazardous substances associated with the Nutting Site.

XXIV.

Remedies of Parties

The terms of this Order shall be legally enforceable by either party in a court of appropriate jurisdiction.

Nothing in this Order shall waive the MPCA's right to enforce this Order, to take any action authorized by Minn. Stat. Ch. 115B or by any other law should Nutting fail to maintain compliance with this Order or to compel Nutting to comply with an order issued by the Commissioner under Part VIII.

XXV.

Failure to Make Timely Submittals

A. For each week that Nutting fails to make a Submittal to the MPCA Commissioner in accordance with the time schedules contained in the Exhibit to this Order or any other time schedule approved or modified by the MPCA Commissioner, Nutting shall be obligated to pay into the Environmental Response, Compensation and Compliance Fund of the Treasury of the State of Minnesota, by check payable to the Minnesota Pollution Control Agency, the sum of two-thousand dollars (\$2,000.00).

B. Nutting shall not be liable for payment under this Part if it has submitted to the MPCA Commissioner a timely request for an extension of schedules under Part XXVI of this Order and such request has been granted.

C. Upon determination by the MPCA Commissioner that Nutting has failed to make a Submittal referenced herein, written notice of the failure specifying the provision of the Order which has not been complied with shall be given to Nutting. Nutting shall pay the required sum within thirty (30) days of the Commissioner's notice or within thirty (30) days of making the Submittal which was the subject of the notice, whichever is sooner. Nutting retains the right to dispute under Part VIII the factual basis for the MPCA Commissioner's determination that a Submittal has not been made in a timely fashion. However, Nutting waives any rights it may have to challenge, on legal validity of the requirement that it make payments under this Part.

D. Payments required by this Part shall accrue from the date on which the Submittal was to have been made. Payments required by this Part shall cease to accrue when Nutting delivers the required Submittal to the MPCA Commissioner.

E. Nothing in this Part shall be construed as prohibiting or in any way limiting the ability of the MPCA to seek civil penalties available under Minn. Stat. Ch. 115B or any other law for any noncompliance with this Order except for noncompliance with the schedules for making Submittals.

XXVI.

Extensions of Schedules

Extensions shall be granted if requests for extensions are submitted in a timely fashion and good cause exists for granting the extension. All extensions must be requested by Nutting in writing. The request shall specify the reason(s) why the extension is needed. Extensions shall only be granted for such period of time as the MPCA Commissioner or MPCA Board determines is reasonable under the circumstances. A requested extension shall not be effective until approved by the MPCA Commissioner or MPCA Board.

The MPCA Commissioner may extend the time schedules contained in this Order for a period not to exceed ninety (90) days except that if an extension is needed as a result of (1) delays in the issuance of a necessary permit which was timely applied for; (2) judicial review of the issuance, non-issuance or re-issuance of a necessary permit; or, (3) judicial review under Part VIII of this Order, the MPCA Commissioner may extend the time schedules for a longer period. Extensions of greater than ninety (90) days requested for reasons other than the three specified above may be granted under this Order, but only if approved by the MPCA Board pursuant to Part XXII (Amendment of Order) of this Order.

The burden shall be on Nutting to demonstrate to the satisfaction of the MPCA Commissioner or MPCA Board that the request for the extension has been submitted in a timely fashion and that good cause exists for granting the extension. Extensions shall be granted where Nutting demonstrates that the reason the extension is needed is due to:

(1) Circumstances beyond the reasonable control of Nutting, including delays caused by the MPCA;

(2) Stoppage of work under Part X (Creation of Danger) which work stoppage was not the result of any non-compliance by Nutting with this Order;

(3) Review resulting from the good faith invocation by Nutting of Part VIII of this Order, which review results in delays in implementation of this Order making it impossible for Nutting to meet the required schedule(s); and,

(4) Delays which are directly attributable to any changes in permit terms or conditions or refusal to issue a permit needed to implement the requirements of this Order, as contemplated under Part IX (Permits) of this Order, if Nutting filed a timely application for the necessary permit.

XXVII.

Conveyance of Title

No conveyance of title, easement, or other interest in those portions of the Nutting Site on which any containment system, treatment system, monitoring system or other response actions provided for under Exhibit A are installed or implemented pursuant to this Order shall be consummated by Nutting without provision for continued maintenance of any such system or other response actions. At least sixty (60) days prior to any conveyance, Nutting shall notify the MPCA Commissioner by registered mail of the provisions made for the continued operation and maintenance of any response actions or system installed or implemented pursuant to this Order.

XXVIII.

Financial Responsibility

Within 30 days of the effective date of this Order, Nutting shall submit to the MPCA Commissioner, for review and approval, financial assurance guaranteeing performance of the work specified in Exhibit A to this Order. Nutting shall also submit financial assurances guaranteeing payment of the MPCA administrative costs as set forth in Part XX.

XXIX.

Successors

This Order shall be binding upon Nutting, its successors and assigns, and upon the MPCA, its successors and assigns.

XXX.

Termination

The provisions of this Order shall be deemed satisfied and terminated upon receipt by Nutting of written notice from the MPCA Commissioner that Nutting has demonstrated, to the satisfaction of the MPCA, that all the terms of this Order have been completed.

XXXI.

Effective Date

This Order is effective upon the date that the MPCA executes this Order.

BY THEIR SIGNATURES HEREON, THE UNDERSIGNED REPRESENT
THAT THEY HAVE AUTHORITY TO BIND THE PARTIES THEY
REPRESENT, THEIR AGENTS, CONTRACTORS, AND SUBSIDIARIES

IT IS SO AGREED:

Stewart M. Shiff President
The Nutting Company Title

9/25/87
Date

IT IS SO ORDERED:

Janet L. Green
Chairperson, Minnesota Pollution Control
Agency

9/22/87
Date

Michael Robert
Commissioner, Minnesota Pollution
Control Agency

9/22/87
Effective Date

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of The)	
Nutting Company, Faribault,)	
Minnesota, Proceedings)	
Under Section 17 and 18)	RESPONSE ORDER
of the Minnesota)	BY CONSENT
Environmental Response)	
and Liability Act)	
)	

IT IS HEREBY STIPULATED AND AGREED by and among the parties
hereto as follows:

A.

Jurisdiction

This RESPONSE ORDER BY CONSENT (Order) is issued pursuant to
the authority vested in the Minnesota Pollution Control Agency
(MPCA) by the Environmental Response and Liability Act of 1983
(ERLA), Minn. Stat. Ch. 115B, and by Minn. Stat. Chs. 115 and 116.

On the basis of the testing and analysis described in the
Statement of Facts, *infra*, and the MPCA's files and records,
the MPCA has determined that the previous disposal of hazardous
substances at a disposal site on property owned by The Nutting
Company (Company) has given rise to a release of hazardous
substances, and that the release is causing ground water con-
tamination. In addition, the MPCA has determined that (1) the
Company is a responsible person within the meaning of Section 3 of
ERLA; (2) the Company's property constitutes a facility (property)

within the meaning of Section 2, subd. 5 of ERLA; (3) the actions to be taken pursuant to this Order are reasonable and necessary to protect the public health or welfare or the environment; (4) a reasonable time for beginning and completing the actions required by this Order has been provided for; and (5) the Company will undertake the actions requested by the MPCA in this Order.

In signing this Order, the Company does not admit liability or responsibility and retains the right to controvert in any subsequent proceedings, the validity of any of the determinations made herein by the MPCA. Nothing herein shall be construed as a waiver of any statutory or common law defenses which the Company may wish to raise in any action to enforce the terms of this Consent Order or in any other proceeding. The Company does, however, hereby specifically agree to undertake all actions required of it by the terms and conditions of this Order within the time periods set out herein, subject to any amendments, modifications or extensions of time related thereto.

B.

Parties

This Order shall apply to and be binding upon the the Company and the MPCA.

C.

Statement of Facts

1. The Company is a small manufacturing facility located in Faribault, Minnesota. Since 1891 the Company has produced a variety of hand pushable carts and caster wheels.

2. Wastes have been produced as a result of the Company's manufacturing process throughout most of its existence. However, disposal locations were not documented prior to 1959.

3. Beginning in 1959, a pit on the the Company's property was used for disposal of wastes and limited amounts of sludges.

4. In April of 1979 the MPCA Staff issued a Notice of Noncompliance to the Company regarding its disposal practices.

5. In 1980, the Company excavated all contaminated soils associated with the disposal pit. The contaminated soils were landspread pursuant to a MPCA State Disposal System permit for one time spreading of sludge. The pit was backfilled and then paved.

6. In 1979, prior to the excavation of the contaminated soils, analysis of ground water samples from three monitoring wells installed by the Company near the pit on the Company property showed that the ground water beneath the pit was contaminated with cadmium, lead, cyanide, methylene chloride, trichloroethylene and xylene.

7. Two additional ground water monitoring wells were installed by the Company on its property in 1981 after excavation of the contaminated soils. A sixth monitoring well was installed by the Company on its property in 1983. The March 1983 ground water test results from these wells evidenced trichloroethylene levels of 447 ppb in Well B-4, 57 ppb in Well B-5 and non-detectable levels in B-6.

8. In August of 1982 the MPCA requested that the Company install three additional drift/St. Peter aquifer wells in a down gradient direction with respect to the ground water flow direction

in this aquifer and that the wells be located four to five blocks from the Company's property. The MPCA also requested that the Company install one Prairie du Chien aquifer well. These wells were requested in order to identify the extent of contamination originating from the Company's property. Because the Company is experiencing severe financial problems, the Company proposed an alternative to the MPCA request and installed an additional ground water monitoring well B-6 on the Company's property in March, 1983. The MPCA staff did not approve the proposal and determined that the installation of a monitoring well only on the Company's own property was inadequate to determine the extent of contamination originating from the Company's property.

9. The U.S. Environmental Protection Agency (EPA) recommended drinking water criteria for trichloroethylene is 27 parts per billion (ppb).

10. Trichloroethylene is a hazardous substance under Section 2, subd. 8 of ERLA.

11. On September 27, 1983, the MPCA Board issued a Request for Response Action to the Company requesting the Company to undertake a remedial investigation to determine the extent of ground water contamination originating from the Company's property.

12. The City of Faribault's five operating wells (municipal wells) are located as close as approximately one-half mile from the Company's property. Four of the wells are south of the Cannon River and down gradient from the Company's property with respect to ground water flow direction in the drift/St. Peter aquifer. A

fifth municipal well is located north of the Cannon River. One additional municipal well south of the Cannon River was abandoned at an undetermined time.

13. Beginning in 1982, samples taken from the municipal wells showed varying levels of trichloroethylene, 1,1-dichloroethylene and other hazardous substances. 1,1-dichloroethylene has not been detected in ground water monitoring wells on the Company's property.

14. The levels of trichloroethylene and 1,1-dichloroethylene have regularly been detected in two of the municipal wells and have exceeded drinking water criteria on occasion. However, because Faribault mixes water from all five wells in a reservoir prior to distribution, the distributed water has not exceeded drinking water criteria for trichloroethylene. In samples analyzed by a private laboratory for the City of Faribault, 1,1-dichloroethylene levels in the reservoir exceeded EPA recommended drinking water criteria on two occasions; in June and September of 1983.

15. In April of 1983 the Minnesota Department of Health recommended that the City of Faribault use a different pumping schedule to reduce contaminant levels.

16. Further investigation is necessary to determine the extent of contamination originating from the Company's property and whether the Company is or is not the source of trichloroethylene and other hazardous substances in the municipal wells.

17. Implementation of this Order is necessary to protect the public health or welfare or the environment.

ORDER AND AGREEMENT

Based on the information available to the parties on the effective date of this Order, and without Nutting's admission of liability on the factual assertions of the MPCA, IT IS HEREBY ORDERED AND AGREED AS FOLLOWS:

I.

Scope of Order

This Order shall govern the following matters:

1. Investigation of the extent of ground water contamination originating from the Company's property; and
2. The preparation of a remedial action feasibility study, if necessary, based on the results of the investigation of the ground water contamination originating from the Company's property.

This Order does not cover any remedial action which may be necessary nor does it cover any matter other than those described above.

II.

Definitions

A. Unless otherwise explicitly stated, the definitions provided in Minn. Stat. § 115B.02 (Supp. 1983) shall control the meaning of the terms used in this Order.

B. Cost effective, when used in this Order or in Exhibits A to this Order, shall mean the lowest cost alternative that is technologically feasible and reliable and which effectively mitigates and minimizes damage to and provides protection of public health, welfare, or the environment.

III.

Remedial Investigation

The Company shall complete a remedial investigation (RI) of ground water contamination originating from and reasonably attributable to its property pursuant to the terms of Part V of Exhibit A to this Order. Exhibit A is attached hereto and made an integral and enforceable part of this Order. α

IV.

MPCA Action Regarding Other Responsible Parties

The MPCA shall use its best efforts to identify sources of contamination which are suspected to have resulted from disposal practices of persons, other than the Company, and which are believed to contribute to contamination in or near the area of the RI conducted under this Order by issuing Requests for Information to any and all persons it has reason to believe are responsible persons in accordance with Minn. Stat. § 115B.17, subd. 3. The MPCA shall copy the Company with all Requests for Information issued by the MPCA and all responses thereto. For each person, other than the Company, that the MPCA Director has reason to believe is a responsible person, the MPCA Director shall prepare a proposed Request for Response Action pursuant to Minn. Stat. §§ 115B.17 and 115B.18 requesting the person to investigate any contamination reasonably attributed to that person's activities. The MPCA Director shall request the MPCA to issue the Requests for Response Action. If the MPCA issues a Request for Response Action and the responsible person(s) to whom it is directed refuse(s) to take the requested actions in the manner and within the time requested, the MPCA Director

shall request that the MPCA issue a Determination of Inadequate Response, pursuant to Minn. Stat. § 115B.17, subd. 1, to each of the responsible persons who have failed to adequately respond.

The MPCA agrees that, with respect to other sources of contamination for which there is no responsible person or for which a responsible person has refused to take the requested actions, the Agency will undertake the remedial investigation when and if the site is eligible for funding under the rules establishing a permanent list of priorities promulgated pursuant to Minn. Stat. § 115B.17, subd. 13 (Supp. 1983).

V.

Remedial Action Feasibility Study

Based on and as a part of the RI conducted pursuant to Part III of this Order, the Company shall make a recommendation to the MPCA Director regarding the need for a Remedial Action Feasibility Study (FS). Subject to the dispute resolution provisions of Part VI of this Order, if the MPCA Director determines, based on a review of the RI, that an FS is necessary, the Company shall complete the FS pursuant to the terms of Part VI of Exhibit A. The FS shall identify and assess remedial actions to remedy contamination of ground water, including remedies for contamination, if any, of private wells and Faribault municipal wells, attributable to the Company property.

If sources of contamination which are suspected to have resulted from disposal practices of a person(s) other than the Company are identified in or near the area of the RI conducted under this Order prior to commencement of the FS, and are believed to contribute to contamination in or near the area, the MPCA Director shall direct the Company to (1) temporarily suspend work on the FS pending completion of other remedial investigatory activities in the area, or (2) complete an FS with respect to only those contaminants which have resulted from the Company's disposal practices. If the MPCA Director suspends work on the FS under this Part, the time schedules for the completion of the FS shall be extended by the period of the suspension.

VI.

Resolution of Disputes

- A. If a dispute arises as to the meaning of any part of this Order, other than with respect to the approval of submittals, the Company shall provide the MPCA Director with a written statement supporting its position. The MPCA Director shall issue an order resolving the questions. The order shall be considered a final action of the MPCA regarding the issue in dispute.
- B. In the event there is a dispute between the MPCA and the Company regarding any submittal, document, report, or schedule (collectively "submittal"), delivered to the MPCA, including a recommendation on the need for a Remedial Action Feasibility Study, the dispute shall be resolved in the following manner.

1. The MPCA Director shall review all submittals made by the Company as required by this Order within twenty-one (21) calendar days of receipt and notify the Company by the twenty-first calendar day, or the first working day thereafter, of her approval, disapproval, or modification of the submittal. In the event the submittal is approved, it shall become an integral and enforceable part of this Order. In the event that the submittal is disapproved in whole or part, the MPCA Director shall notify the Company of the specific inadequacies in writing, and shall indicate the necessary amendments or revisions. In the event that the submittal is modified, the MPCA Director shall notify the Company of the specific modification(s) made to the submittal and the reason(s) for the modification(s).

2. Within fourteen (14) calendar days of receipt of any notice of disapproval or modification, or on the first working day thereafter, the Company shall (1) submit revisions to correct inadequacies, (2) respond to the modification, or (3) state in writing the reasons why the submittal, as originally submitted, should be approved.

3. If, within fourteen (14) calendar days from the date of the Company's submission under 2, above, or the first working day thereafter, the parties have not reconciled all issues in disagreement, the MPCA Director may make any changes in the submittal as she deems necessary. The changes shall become an integral and enforceable part of this Order. Any changes shall be deemed "final administrative actions" of the MPCA regarding this Order.

4. All submittals or modifications thereto shall be technologically feasible, cost effective, and in accordance with sound engineering practice. The MPCA shall give due consideration to the economic impact of any submittal and any modifications to a submittal as provided in Minn. Stat. § 116.07.

5. The MPCA and the Company shall provide the opportunity to consult with each other during the review of submittals or modifications under this Part.

6. Failure of the Company to comply with a modification made to the Order pursuant to this Part shall not void the entire Order. The MPCA may, however, apply to a court of competent jurisdiction for an Order enforcing the modification made to this Order.

VII.

Creation of Danger

In the event the Company's Project Leader or the MPCA Director determines that activities implementing or in noncompliance with this Order, or any other circumstances or activities, are creating an actual danger to the health or welfare of the people on the Company property or in the surrounding area or to the environment, including the Company's property, the Company's Project Leader on his or her own initiative may order that further implementation of this Order be stopped for such period of time as is necessary to abate the danger, or the MPCA Director may order the Company to stop further implementation of this Order for such period of time as is necessary to abate the danger or may petition a court of

competent jurisdiction for such an Order. If implementation of this Order is stopped by the Company, it shall immediately notify the MPCA of the stoppage and the reasons therefor. During any stoppage of work under this paragraph, the Company's obligations with respect to the work ordered to be stopped shall be suspended and the time period for implementation shall be extended, pursuant to Part XVII of this Order, for such a period as the MPCA Director determines is reasonable under the circumstances.

VIII.

Reporting

Unless otherwise specified, documents submitted by the Company pursuant to this Order shall be sent by mail and addressed as follows:

Edward Meyer
Solid and Hazardous Waste Division
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113

Documents prepared by the MPCA pursuant to this Order shall be provided to the Company by mailing a copy of the document to:

Wayne Nelson
The Nutting Company
1201 West Division Street
Faribault, Minnesota 55201

IX.

Project Leaders

The Company and the MPCA shall each designate a Project Leader and alternate for the purpose of overseeing the implementation of this Order. To the maximum extent possible, communications between the Company and the MPCA concerning the terms and conditions of this Order

shall be directed through the Project Leaders. Each Project Leader shall be responsible for assuring that all communications from the other Project Leader are appropriately disseminated and processed. The parties shall notify each other of the names of their Project Leader and alternate within ten (10) days of the effective date of this Order. Should it become necessary for a party to change the Project Leader or alternate assigned under this Order, the party making the change shall promptly notify the other party of the change.

During the implementation of this Order, the Project Leaders shall have at least the authority to (1) take samples or direct that samples be taken; (2) the MPCA Project Leader may direct that work stop for a period not to exceed 24 hours whenever the MPCA Project Leader determines that activities at the site create an actual danger to public health or welfare or the environment; (3) observe, take photographs and make such other reports on the progress of the work as the Project Leader deems appropriate; (4) review records, files and documents relevant to this order; and (5) make or authorize minor field modifications in the work plans or in techniques, procedures or design utilized in carrying out this Order, which modifications are necessary to the completion of the project. Any field modifications shall be approved orally by all Project Leaders prior to being implemented. Within forty-eight (48) hours following the minor field modification, the Project leader who requested the modification shall prepare a memorandum detailing the modification and shall provide or mail a copy of the memorandum to the other Project Leader.

The MPCA Project Leader or alternate shall either be on-site or available on call during all hours of work. The absence of any Project Leader from the Company's property shall not be cause for stoppage of work.

This Part shall not be construed as limiting the authority of the Company or the MPCA under Part VII of this Order.

X.

Sampling and Data Availability

The MPCA Director and the Company shall make available to each other the results of sampling and testing as well as any monitoring data generated by the MPCA or the Company, or on their behalf, which result from the implementation of this Order. The Company and the MPCA shall, upon request, allow split or duplicate samples to be taken from any sampling or testing conducted by the other party during the implementation of this Order. Each Project Leader shall endeavor to notify the other Project Leader at least forty-eight (48) hours in advance of any sample collection so that the Project Leader may obtain split or duplicate samples. If it is not possible to provide forty-eight (48) hours prior notification, each Project Leader shall notify the other Project Leader as soon as possible after he or she becomes aware that samples will be collected.

XI.

Confidential Information

The Company may assert a business confidentiality claim covering part or all of the information requested by this Order

pursuant to Minn. Stat. §§ 116.075, 15.1612, and 15.1673.

Analytical data shall not be claimed as confidential by the Company. If determined confidential by the MPCA Director, the information will be afforded protection under Minn. Stat.

§§ 116.075, 15.1612, and 15.1673. If no such claim accompanies the information when it is submitted to the MPCA Director, it may be made available to the public without further notice to the Company.

XII.

Other Claims

Nothing herein is intended to release any claims, causes of action or demands in law or equity against any person, firm, partnership or corporation not a signatory to this Order.

The MPCA shall not be held as a party to any contract entered into by the Company in carrying out the terms of this Order.

XIII.

Covenant Not To Sue

To avoid adjudication between the parties hereto and the expense that would be incurred in connection with such adjudication, and to set to rest the differences existing among them based on information known to the parties as of the effective date of this Order, without impairing or affecting the claims of the MPCA or the Company in connection with the Company property, and for and

in consideration of the commitments made by each of the parties to this Order, the MPCA covenants not to bring any civil claims which the MPCA may have against the Company with respect to liability under Minn. Stat. Ch. 115B for remedial investigations and a remedial action feasibility study, if required.

This Order shall not be construed as (1) releasing the Company from responsibility or liability for any remedial or removal actions other than those matters identified above, or (2) precluding the MPCA from bringing an action to enforce the terms of this Order.

XIV.

Other Applicable Laws

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations, including laws and regulations related to occupational safety and health unless an exemption from such requirements is specifically provided. In the event there is a conflict in the application of local, state or federal laws or regulations, the more stringent of the conflicting provisions shall apply.

XV.

Recovery Of Expenses

Within thirty (30) days of the effective date of this Order, the Company shall pay into the Environmental Response, Compensation and Compliance Fund of the Treasury of the State of

Minnesota the sum of \$8,500 as reimbursement of the MPCA's expenses in connection with the investigation of the Company facility through April 24, 1984. Payment of this sum shall be in full and complete satisfaction of all monetary claims of the MPCA through April 24, 1984, related to the Company property.

The Company shall also reimburse the MPCA for its reasonable and necessary costs associated with the implementation of this Order, which costs shall not exceed \$7,500 in any calendar year. Within thirty (30) days of the end of each calendar year, the MPCA will submit to the Company an itemized statement of its expenses for the previous year. Following receipt of the itemized statement the Company shall pay, within sixty (60) days, into the Environmental Response, Compliance and Compensation Fund of the Treasury of the State of Minnesota the required sum. Any dispute between the Company and the MPCA regarding reasonable and necessary administrative costs shall be resolved in accordance with the provisions of Part VI of this Order. Payment by the Company of the MPCA's reasonable and necessary administrative costs under this Part shall terminate on the effective date of termination of this Order in accordance with Part XXI hereof.

XVI.

Liquidated Damages

The Company shall pay into the Environmental Response, Compensation and Compliance Fund of the Treasury of the State of Minnesota the sum of five hundred dollars (\$500) for each week or

portion thereof that the Company fails to submit to the MPCA Director the documents required by Exhibit A to this Order in accordance with the time schedules set forth in Exhibit A, or fails to submit within the time specified in paragraph XVIII, a certificate of insurance which complies with the requirements of paragraph XVIII, unless an extension of the time schedules is granted as provided in paragraph XVII of this Order.

Upon the determination by the MPCA that the Company is not in compliance with any of the provisions referenced above, the MPCA shall immediately give written notice to the Company of the non-compliance, which notice shall specify the provision allegedly not complied with and the date the noncompliance commenced. The liquidated damages shall accrue from the date which the document was to be submitted to the MPCA under Exhibit A, or under paragraph XVIII of this Order. Upon the curing by the Company of the noncompliance set forth in the notice, the liquidated damages shall cease to accrue with respect to the particular matter described in the notice provided, however, the Company shall be excused from paying such damages if the Company meets the final date for completion of all work required by this Order.

XVII.

Amendment of Order

This Order may only be amended by a written agreement between the Company and the MPCA Board, except that the MPCA Director may amend the Order by extending any time schedule set forth in

Exhibit A for a period of time not to exceed ninety (90) days per extension. Any such extension(s) must be requested by the Company in writing and shall be granted only where the Company has demonstrated good cause for the extension(s). Delays which result from circumstances beyond the control of the Company shall, upon demonstration of such circumstances, constitute good cause for an extension of a time schedule.

XVIII.

Liability Insurance

The Company shall, within thirty (30) days of the effective date of the Order, provide the MPCA Director with a current certificate of insurance certifying coverage for general liability with minimum limits of \$500,000 per occurrence with an annual aggregate of \$500,000 and a \$3,000,000 umbrella exclusive of legal defense costs, for bodily injury and property damage liability combined and containing the provision that the insurance shall not be cancelled for any reason except after thirty (30) days notice. These insurance limits are not to be construed as maximum limits. The Company is solely responsible for determining the appropriate amount of insurance it should carry for injuries or damages resulting from implementation of this Order.

XIX.

Conveyance of Title

No conveyance of title, easement, or other interest in the

Company property shall be consummated by the Company without provision for the Company to carry out the terms of this Order.

XX.

Remedial or Removal Work

The execution of this Order shall not preclude the MPCA from issuing to the Company a Request for Response action for remedial or removal actions if the MPCA determines, based on the information gathered pursuant to this Order and other information available to the MPCA, that remedial or removal actions must be taken at or near the Company property. If remedial or removal actions are found to be necessary in the area of the RI undertaken pursuant to this Order, the MPCA Director agrees that she will make all reasonable efforts in accordance with Part IV of this Order to secure the cooperation of each person the MPCA Director has reason to believe is a responsible person.

XXI.

Termination

The provisions of this Order shall terminate upon the completion of the investigation of contamination originating from the Company's property required by Part V of Exhibit A to this Order, unless an FS is required under the terms of this Order. If an FS is required, the provisions of this Order shall terminate upon the acceptance of the study by the MPCA Director. The FS shall be accepted by the MPCA Director if it meets the requirements of Part VI of Exhibit A to this Order.

XXII.

Access to Property

The Company shall use its best efforts to obtain access to property upon which the Company, its contractors and the MPCA will be required to enter or conduct work in order to carry out the terms of this Order. The Company shall not be required to acquire an easement or any other interest in land or pay any unreasonable access fees as part of its efforts to obtain access. If the Company is unable to obtain access using its best efforts, the MPCA agrees to exercise its authority under Minn. Stat. § 115B.17, subd. 4 (Supp. 1983) to obtain access to property necessary to carry out this Order.

XXIII.

Effective Date

This Order is effective upon the date the last required signature is affixed hereto.

IT IS SO AGREED AND ORDERED:

By: _____
Nutting Truck & Caster Title Date

Chairperson, Minnesota Pollution Control Agency Date

Executive Director, Minnesota Pollution Control Agency Date

Exhibit A

REMEDIAL INVESTIGATION AND FEASIBILITY STUDY

I. INTRODUCTION

Parts III and V of the Response Order by Consent (Order), to which this Exhibit is appended, require The Nutting Company (Nutting) to conduct a Remedial Investigation (RI) and conditionally, to conduct a Feasibility Study (FS) of the Nutting property and impacted areas off of the Nutting property (Faribault site). This Exhibit sets forth the requirements for completing the RI and, if required, the FS and is appended to and made an integral and enforceable part of the Order.

II. PREPARATION AND REVIEW OF SUBMITTALS

Nutting shall submit to the Minnesota Pollution Control Agency Director (MPCA Director) all reports, work plans, well placement and construction plans, quality control plans, and other submittals required by this Exhibit. The review, modification and approval of all these submittals shall be governed by Part VI of the Order, except that the site safety and security plans described in Part IV of Exhibit A do not require MPCA Director approval.

III. RETAIN CONSULTANT

Within seven (7) days of the effective date of the Order, Nutting shall retain a consultant(s) qualified to undertake and complete the requirements of this Exhibit and shall notify the MPCA Project Leader of the name of that consultant(s).

IV. SITE SECURITY AND SAFETY PLANS

Nutting shall prepare and submit to the MPCA Director for comment (1) a Faribault site security plan to limit and control the general public's access to areas of the Faribault site, to the extent possible, when Nutting is on the site undertaking actions required by the RI and (2) a Faribault site safety plan to protect the health and safety of personnel involved in the RI, and, if required, the FS.

The Faribault site security and safety plans shall be submitted at the same time that the Proposed RI Work Plan is submitted, pursuant to Part V, Task A, below. The Faribault site safety plan shall incorporate and be consistent with the requirements of:

1. Section 111(c)(6) of CERCLA;
2. EPA Order 1440.3 -- Respiratory Protection;
3. EPA Order 1440.2 -- Health and Safety Requirements for Employees Engaged in Field Activities;
4. EPA Occupational Health and Safety Manual

The MPCA Director may comment on the Faribault site security and safety plans but will neither approve nor disapprove those plans.

Nutting shall implement the Faribault site security and safety plans, taking into account the comments of the MPCA Director, if any, when it conducts the RI, pursuant to Part V, below.

V. REMEDIAL INVESTIGATION

Nutting shall design and implement an RI which accomplishes the purposes and meets the requirements of this Part. The purposes of the RI are (1) to

determine the extent of ground water contamination originating from the Nutting property and (2) to provide information to determine whether an FS will be necessary.

The requirements of the RI are set forth in the three tasks below.

Task A. Submit an Evaluation Report, Proposed RI Work Plan and Quality Assurance/Quality Control Plan

Within 45 days of the effective date of the Order, Nutting shall submit for MPCA Director review and approval an Evaluation Report, a Proposed RI Work Plan and a Quality Assurance/Quality Control Plan (QA/QC Plan). These submittals may be combined in a single document.

The Evaluation Report shall contain the information set forth in Task A.1. below.

The Proposed RI Work Plan shall contain the information set forth in Task A.2. below. The QA/QC Plan shall contain the information set forth in Task A.3. below. The Evaluation Report, the Proposed RI Work Plan and the QA/QC Plan shall be reviewed, modified and/or approved by the MPCA Director in accordance with Part VI of the Order.

A.1. Evaluation Report

a. Site background

The Evaluation Report shall include an explanation of the operational history of Nutting, including Nutting's past disposal practices on the Nutting property, location, pertinent area boundary features, and the general physiography, hydrology, stratigraphy, and geology of the Faribault site.

b. Topographic Maps

Using existing available data, the Evaluation Report shall include Faribault site maps using a suitable scale and contour interval. Surface water

features, buildings, process areas, storage tanks, well locations, forested areas, utilities, paved areas, easements, right-of-ways, pipelines (surface and subsurface) and impoundments shall be shown to the extent necessary to carry out the requirements of this Order. The maps shall be of sufficient detail and accuracy to locate all current or proposed future work at the Faribault site.

c. History of remedial or removal actions

The Evaluation Report shall include a summary of any previous response actions taken by Nutting at the Nutting property. This summary shall include field inspections, sampling surveys, cleanup activities, and other technical investigations as well as any removal or remedial action taken at the Nutting property by Nutting.

A.2 Proposed Remedial Investigation Work Plan

Nutting shall submit a proposed RI Work Plan which, upon implementation: (a) will determine the extent of ground water contamination originating from the Nutting property; (b) will produce sufficient data and information to allow Nutting to submit the report described in Task C, below; and, (c) will produce data sufficient to determine whether an FS is necessary.

The proposed RI Work Plan shall include proposed methodologies to accomplish the following RI activities and shall also include proposed dates and/or time intervals for initiation and completion of each of the following RI activities:

a. Source Investigation

The seepage pit which Nutting excavated in 1980 appears to be a primary source of release of hazardous substances which have been detected by the monitoring wells installed by Nutting on Nutting property. However, sampling results from the upgradient well on Nutting property, as well as a statement

from a Nutting employee, indicate the presence of one or more disposal sites located either on or off of the Nutting property.

Nutting shall determine whether wastes, other than foundry wastes, have been disposed on other portions of the Nutting property by taking soil borings. Soils shall be analyzed, if contamination is suspected, to determine which contaminants are present.

Nutting shall determine the extent of contamination from any additional contamination sources, other than foundry wastes, which are discovered. Nutting may present any documents as part of the RI work plan in support of a position to limit or eliminate further source investigation.

b. Hydrogeologic Investigation

(1) Drift/St. Peter Aquifer Water Quality

The impacts of Nutting's disposal practices on the drift/St. Peter aquifer beyond the boundary of the Nutting property are unknown. Nutting shall identify these impacts by accomplishing the following.

Phase One

Install, at Nutting's discretion, one well upgradient of the Nutting property and install three monitoring wells downgradient of the Nutting property in the drift/St. Peter aquifer. If Nutting does not install an upgradient well during phase one, the MPCA may require the installation of an upgradient well pursuant to Task D, if the information reported in Task C demonstrates the need for an upgradient well. All drift/St. Peter aquifer monitoring wells shall be installed so that representative water samples are obtained. Well screens in the St. Peter aquifer wells shall be set from the top of the underlying basal layer up to a point which is above the saturation level, unless the MPCA Director approves an alternative well screening plan. Monitoring and sampling shall be addressed in Task A.2.d. Nutting shall submit proposed St. Peter well locations and construction details.

(2) Basal St. Peter Layer Investigation

The integrity of the basal layer in the St. Peter sandstone as it relates to preventing downward migration of ground water and ground water contamination is unknown. Nutting shall characterize the basal layer in the St. Peter sandstone by means of retrieving and analyzing core samples, or another method acceptable to the MPCA Director.

(3) Prairie du Chien Aquifer Water Quality

The impacts of Nutting's waste disposal practices on the Prairie du Chien aquifer are unknown. Nutting shall identify these impacts by accomplishing the following tasks.

Phase One

Nutting shall submit a proposed location and construction detail for a Prairie du Chien aquifer monitoring well. If the proposed Prairie du Chien well is not located very near a St. Peter aquifer well, a new St. Peter well shall be constructed next to the Prairie du Chien well in order to provide a vertical ground water quality and gradient profile. All Prairie du Chien aquifer monitoring wells shall be installed so that representative water samples are obtained. Monitoring and sampling shall be addressed in Task A.2.d.

(4) Phase One Report/Additional Phases

Nutting shall submit a Phase One Report to the MPCA Director which, to the extent allowed by the data, identifies the levels and extent of contamination from the Nutting property in the drift/St. Peter and Prairie du Chien aquifers and which characterizes the basal layer of the St. Peter sandstone. Nutting shall also recommend concentrations for sampling parameters which shall serve as a basis for determination of the need for additional drift/St. Peter and Prairie

du Chien wells. Based on these recommended concentrations, Nutting shall further submit a recommendation on the need for, and if recommended, the location and construction details of additional drift/St. Peter and Prairie du Chien wells in order to define the levels and extent of contamination.

The MPCA Director shall review and accept or reject Nutting's Phase One Report, including Nutting's recommendations on 1) concentrations for sampling parameters to serve as a basis for determination of the need for additional drift/St. Peter and Prairie du Chien wells, and 2) the need for and, if recommended, the locations of additional drift/St. Peter and Prairie du Chien wells. If the MPCA Director rejects any of Nutting's recommendations, the MPCA Director shall specify the reasons for the rejection. Any dispute between Nutting and the MPCA Director regarding the concentrations for sampling parameters to serve as a basis for determination of the need for additional drift/St. Peter and Prairie du Chien wells and the need for and, if recommended, the location of such additional wells shall be resolved pursuant to Part VI of the Order.

If the MPCA Director determines that additional drift/St. Peter wells and/or Prairie du Chien wells are necessary, Nutting shall construct these wells, analyze the samples from these wells and submit a Phase Two Report, including, to the extent allowed by the data, identification of levels and extent of contamination and a recommendation as to the need for additional wells. Nutting shall repeat this process of well location and construction, sampling and submittals until the MPCA Director determines that the levels and extent of contamination from the Company's property in the drift/St. Peter and Prairie du Chien aquifers are defined in accordance with the concentrations for sampling parameters used to determine the need for additional wells.

c. Proposed Remedial Investigation Time Schedule

Nutting shall propose dates and/or time intervals for initiation and completion of all remedial investigation activities proposed in the RI Work Plan. The remedial investigation activities for which Nutting shall propose a time schedule shall include the following:

1. Submit proposal for drift/St. Peter well locations and construction details.
2. Begin construction of drift/St. Peter wells.
3. Complete construction of drift/St. Peter wells.
4. Complete analysis of samples for drift/St. Peter wells.
5. Submit proposal for source investigation.
6. Begin source investigation.
7. Complete source investigation.
8. Submit proposal for basal St. Peter investigation.
9. Conduct basal St. Peter investigation.
10. Complete analysis of basal St. Peter layer.
11. Submit proposal for Prairie du Chien (PdC) and companion drift/St. Peter well locations, if necessary, and construction details.
12. Begin construction of PdC well.
13. Begin construction of companion drift/St. Peter well, if necessary.
14. Complete construction of PdC well.
15. Complete construction of companion drift/St. Peter well, if necessary.
16. Complete analyses of samples from PdC and any companion drift/St. Peter wells.
17. Submit document describing level and extent of contamination, basal layer report, and recommendations for concentrations for sampling parameters and for additional PdC wells.
18. Repeat(s) of 1-4 and 11-17 as necessary.

d. Routine Monitoring and Sampling Plan

Nutting shall submit a proposed first year schedule for short term and long term monitoring for all existing and all newly constructed monitoring wells and a sampling plan which proposes locations, quantity and frequency of sampling, sampling methods, and parameters for analysis. The sampling parameters shall include initially total organic carbon, total dissolved solids, metals, and halogenated and non-halogenated hydrocarbons. A balance for major cations and anions shall also be performed. The analysis for metals shall initially include, cadmium, total chromium, lead, nickel, and cyanide. The list of hydrocarbons shall initially include methylene chloride, trichloroethylene, 1,1, dichloroethylene, 1,1-dichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, carbon tetrachloride, xylene, benzene and toluene. The sampling plan, including locations, quantity, and frequency of sampling, sampling methods, and parameters for analysis may be modified by Nutting with MPCA Director approval as data is collected, or by the MPCA Director based on the results of the source investigation.

A.3. Quality Assurance/Quality Control Plan

Nutting shall submit a proposed QA/QC Plan to be utilized in implementing the RI Work Plan. The proposed QA/QC Plan shall be prepared so as to be consistent with the requirements of the U.S. EPA's Contract Laboratory Program. The proposed QA/QC Plan shall specify the procedures for:

- a. sample collection;
- b. chain-of-custody;
- c. calibration in terms of accuracy, precision, and references (the QA/QC Plan shall also specify the number of times and intervals at which analysis equipment will be calibrated);
- d. laboratory analytical methods, including methods for ensuring accurate measurements of data in terms of precision, accuracy, completeness, and comparability;

- e. reporting;
- f. internal quality control;
- g. audits;
- h. preventive maintenance;
- i. corrective action; and,
- j. routine assessment of data precision, representativeness, comparability, accuracy, and completeness of specific measurement parameters involved.

Task B. Conduct Remedial Investigation

Within fifteen (15) days of notification of the MPCA Director's approval or modification of the RI Work Plan and the QA/QC Plan, Nutting shall initiate the RI. Nutting shall conduct the RI in accordance with the methodologies and time schedules set forth in the RI Work Plan and QA/QC Plan as approved or modified by the MPCA Director. The RI shall be conducted in accordance with all applicable laws in existence at the time of the RI including 7 MCAR §§ 1.210-1.224 for the installation of any ground water monitoring wells.

Task C. Report Results of Remedial Investigation

Within ninety (90) days of the receipt of the last laboratory analysis of samples from the wells installed under Task B, Nutting shall prepare and submit to the MPCA Director a report detailing the data and results of the RI. The report shall organize and present all data, analytical results, boring logs and test results. Further, the report shall:

- (a) identify the extent of ground water contamination originating from the Nutting property in the drift/St. Peter and Prairie du Chien aquifer;
- (b) characterize the confining layer at the base of the St. Peter sandstone; and

(c) present the results of the source investigation, if required.

Nutting shall include an assessment of the impact of the ground water contamination originating from the Nutting property on current and future ground water use, including any impact on private wells and Faribault municipal wells, and a recommendation on the need for an FS.

Task D. Acceptance of the Final Report and Determination of the Need for a Feasibility Study

The MPCA Director shall notify Nutting of the Director's acceptance or rejection of the final report and determination of the need for an FS. If the MPCA Director rejects the final report, the MPCA Director shall specify the deficiencies and reasons for the rejection. Nutting shall correct the deficiencies, and resubmit the final report to the MPCA Director within thirty (30) days of MPCA Director notification of rejection. If collection of additional data is necessary to correct the deficiencies, the MPCA Director shall extend the due date for resubmittal of the final report by up to ninety (90) days upon request by Nutting.

The MPCA Director shall base a determination on the need for an FS on the following factors:

1. The level and extent of existing and anticipated future ground water contamination originating from the Nutting property in the drift/St. Peter and the Prairie du Chien aquifers and the effect of this contamination on private wells and Faribault municipal wells.
2. The character of the confining layer at the base of the St. Peter sandstone.
3. The level of ground water contamination detected in monitoring wells, private wells and Faribault municipal wells during the course of the RI.

4. An identifiable remedial action which remedies contamination of private wells and the Faribault municipal wells and is technically feasible, cost effective, and without significant adverse impact on the environment.

If the MPCA Director rejects Nutting's recommendation on the need for an FS, the MPCA Director shall specify the reasons for the rejection. If the MPCA Director determines that an FS is required, she may require that Nutting gather and submit additional information if the MPCA Director determines that the report does not contain sufficient information to allow for development of an FS for the Faribault site. Any dispute between Nutting and the MPCA Director regarding the need for an FS and/or the need for additional information to prepare an FS shall be resolved pursuant to Part VI of the Order.

If sources of contamination which are suspected to have resulted from disposal practices of a person(s) other than Nutting are identified in or near the area of the RI conducted under this Order prior to the commencement of the FS, and are believed to contribute to contamination in or near the area, the MPCA Director shall direct Nutting to (1) temporarily suspend work on the FS pending completion of other remedial investigatory activities in the area, or (2) complete an FS with respect to only those contaminants which have resulted from Nutting's disposal practices.

VI. FEASIBILITY STUDY

The purpose of the Feasibility Study (FS) is to identify and assess remedial actions to remedy contamination of ground water, including remedies for contamination, if any, of private wells and Faribault municipal wells. The FS shall use and build upon the information generated by the RI and consists of the following Tasks.

Task A. Identification of Response Action Objectives, Alternative Response Actions to be Addressed and Discussion of Alternative Response Actions

1. Identification of Objectives and Alternatives

Within thirty (30) days of the MPCA Director's determination that an FS shall be conducted, Nutting shall submit to the MPCA Director a list of objectives to be accomplished by any response action at the Faribault site and alternative response actions which may accomplish the stated objectives and which are technologically feasible, cost-effective, and in accordance with sound engineering practice, which alternatives shall be addressed in the Alternatives Report.

Nutting shall also submit to the MPCA Director a brief description of alternative response actions which Nutting believes are not cost effective, but which may accomplish the stated objectives and which are likely to be technologically feasible and in accordance with sound engineering practice.

The MPCA Director shall notify Nutting of her acceptance, modification, or rejection of the objectives and response action alternatives to be addressed in the FS. If the MPCA Director modifies or rejects any of the objectives or response action alternatives to be addressed in the FS, the MPCA Director shall specify the deficiencies and reasons for the modification or rejection. Any dispute between Nutting and the MPCA Director regarding the objectives to be accomplished by any response action at the Faribault site and those alternative response actions that will be addressed in the FS shall be resolved pursuant to part VI of the Order.

Within one hundred twenty (120) days of the MPCA Director's determination of the response action objectives and alternatives to be addressed in the FS, Nutting shall develop and submit to the MPCA Director an Alternatives Report. The Alternatives Report shall provide an evaluation of each of the alternative

response actions identified for discussion in the FS. (The alternative response actions to be evaluated in the Alternatives Report are referred to below as the "evaluated alternatives.")

The Alternatives Report shall contain the following:

a. Establishment of Response Action Objectives

In the Alternatives Report, Nutting shall analyze the extent to which each of the evaluated alternatives meets each of the objectives to be accomplished by any response action at the Faribault site as determined by the MPCA Director under Task A.1.

b. Identification of Remedial or Removal Technologies

The Alternatives Report shall include an explanation of the various technologies which may be employed to implement each of the evaluated alternatives and shall summarize the effectiveness, reliability, and availability of each specified technology.

2. Discussion of Alternative Response Actions

For each evaluated alternative, the following shall be addressed and presented in the Alternatives Report:

a. Cost

A preliminary estimate of the capital, operation and maintenance costs associated with installing or implementing each evaluated alternative.

b. Environmental Effects

A general discussion of the expected adverse effects which each evaluated alternative may have on the environment;

c. Effectiveness

A preliminary analysis as to whether each evaluated alternative is likely to effectively abate or minimize the release or threatened release and/or minimize the threat of harm to the public health, welfare and the environment.

d. Technical Feasibility and Implementability

A preliminary analysis of the technical feasibility and implementability of each evaluated alternative both in relation to the location and conditions of the release or threatened release and in relation to the reliability of the technologies which could be employed to implement the evaluated alternative.

3. Recommendation on the Need for a Detailed Analysis

Following discussion of each evaluated alternative, Nutting shall make a recommendation on a need for a Detailed Analysis Report based on the criteria set forth in Task B, below, and, if recommended, the alternative or alternatives to be addressed in the Detailed Analysis Report and the scope of the detail description of each alternative to be evaluated in the Detailed Analysis Report.

Task B. Screening of Remedial or Removal Action Alternatives

Upon receipt of the Alternatives Report submitted pursuant to Part VI, Task A, above, the MPCA Director will review and screen the evaluated alternatives and may reject any of the evaluated alternatives that are not feasible or effective in accomplishing the objectives set forth pursuant to Task A.1. The MPCA Director will notify Nutting of the results of the MPCA Director's review and screening within twenty-one (21) days of MPCA receipt of the Alternatives Report and determination on the need for a Detailed Analysis Report. Any dispute between Nutting and the MPCA Director on the screening of a recommended alternative or alternatives or the need for a Detailed Analysis Report shall be resolved pursuant to Part VI of the Order.

In determining whether to reject an evaluated alternative, the MPCA Director will use the following criteria as they relate to the objectives set forth in Task A.1.:

1. Cost

Evaluated alternatives whose estimated costs substantially exceed those of other evaluated alternatives in relation to the benefits which the evaluated alternatives will produce will be eliminated, unless Nutting explicitly desires to further consider the evaluated alternative.

2. Environmental effects

Evaluated alternatives that inherently present significant adverse environmental effects will be excluded from further consideration.

3. Effectiveness

Evaluated alternatives that do not satisfy the response action objectives and do not contribute significantly to the protection of public health, welfare or the environment will be rejected. On-site hazardous substance control alternatives must achieve adequate control of the hazardous substances in terms of abating or minimizing the release or threatened release. Off-site alternatives must minimize or mitigate the threat of harm to public health, welfare or the environment or will be excluded from further consideration.

4. Technical Feasibility and Implementatibility

Evaluated alternatives that may be substantially more difficult to implement, or that rely on unproven technologies will be excluded from further consideration. Evaluated alternatives that are not reliable will be excluded from further consideration.

The MPCA Director shall base a determination on the need for a Detailed Analysis Report on the following factors:

1. The number of remaining evaluated alternatives;
2. Whether a Detailed Analysis Report is required to make a decision on remaining evaluated alternative(s), based on the criteria set forth in Task B;

3. The additional information that is likely to be compiled in a Detailed Analysis Report which is not contained in the Alternatives Report; and
4. The cost of preparing the Detailed Analysis Report.

Task C. Detailed Analysis Report

Within one hundred twenty (120) days of the MPCA Director's notification made pursuant to Part VI, Task B, Nutting shall prepare and submit a Detailed Analysis Report to the MPCA Director on all the evaluated alternatives not rejected by the MPCA Director, if the MPCA Director determines there is a need for a Detailed Analysis Report. The Detailed Analysis Report shall present the results of an analysis of each of the remaining evaluated alternatives and shall include:

1. Detailed Description

Nutting shall prepare and present a detailed description for each of the remaining evaluated alternatives, including, if applicable:

- a. a description of appropriate treatment and disposal technologies;
- b. a description of the special engineering considerations required to implement the remaining evaluated alternatives (e.g., for a pilot treatment facility, any additional studies that may be needed to proceed with final response action design);
- c. a description of operation, maintenance, and monitoring requirements of the remaining evaluated alternatives;
- d. a description of off-site disposal needs and transportation plans;
- e. a description of temporary storage requirements;

f. a description of safety requirements associated with implementing the remaining evaluated alternatives, including both on-site and off-site health and safety considerations;

g. a description of how the remaining evaluated alternatives could be phased into individual operations and how these operations could best be implemented, individually or in groups, to produce significant environmental improvement or cost savings; and,

h. a review of off-site treatment or disposal facilities to ensure compliance with applicable RCRA and MPCA hazardous waste rules.

2. Environmental Assessment

The Detailed Analysis Report shall include an environmental assessment for each remaining evaluated alternative which includes an evaluation of each alternative's environmental effects, an analysis of measures to mitigate adverse effects, physical or legal constraints, and compliance with Federal and State regulatory requirements.

Each remaining evaluated alternative shall be assessed in terms of the extent to which it will mitigate damage to, or protect public health, welfare and the environment, in comparison to the other remaining evaluated alternative(s).

3. Cost Analysis

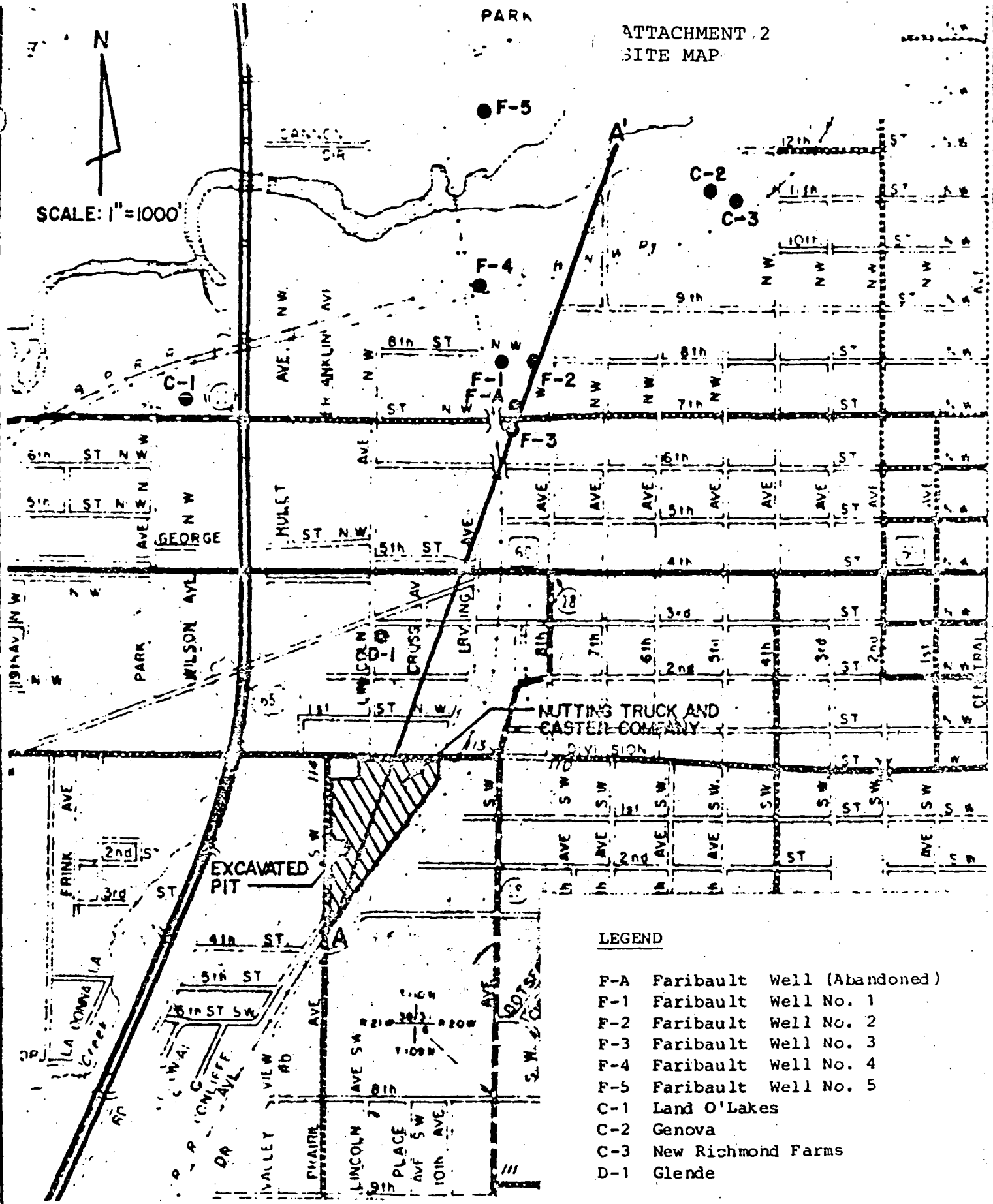
Nutting shall analyze and present in the Detailed Analysis Report the present value capital cost and annualized capital costs of implementing each remaining evaluated alternative (and each phase of the remaining evaluated alternative(s)) as well as the present value annual operating and maintenance costs. The costs shall be presented as both a total cost and an equivalent annual cost.

Task D. Approval of Recommended Response Action Alternative

If a Detailed Analysis Report is determined to not be needed or if more than one alternative is addressed in the Detailed Analysis Report, Nutting shall recommend the response action alternative (or combination of alternatives) that Nutting determines should be installed or implemented at the Faribault site together with the reasons for recommending the alternative(s).

The MPCA Director shall review the response action alternative recommended by Nutting under Task B or Task C, as appropriate, and shall approve or reject the alternative based on the objectives set forth pursuant to Task A.1. and the criteria set out in Task B of this Part. If the MPCA Director rejects the response action alternative, Nutting shall propose for review by the MPCA Director another response action alternative and shall submit its proposal to the MPCA Director within twenty-one (21) days after receiving notice that the MPCA Director has rejected a previously selected alternative. If collection of additional data is necessary to propose another response actions alternative, the MPCA Director may extend the due date for resubmittal of the proposal by up to ninety (90) days upon request by Nutting. Any dispute between Nutting and the MPCA Director on the recommended alternative shall be resolved pursuant to Part VI of the Order.

ATTACHMENT 2 SITE MAP



LEGEND

- F-A Faribault Well (Abandoned)
- F-1 Faribault Well No. 1
- F-2 Faribault Well No. 2
- F-3 Faribault Well No. 3
- F-4 Faribault Well No. 4
- F-5 Faribault Well No. 5
- C-1 Land O'Lakes
- C-2 Genova
- C-3 New Richmond Farms
- D-1 Glende

NUTTING TRUCK AND CASTER COMPANY

LOCATION MAP-LOCAL WELLS

E.A. HICKOK & ASSOCIATES
HYDROLOGISTS-ENGINEERS
MINNEAPOLIS-MINNESOTA

MAY 1983

2

RESPONSE ACTION PLAN

THE NUTTING COMPANY FARIBAUT SITE

Submitted To
Minnesota Pollution Control Agency

February 6, 1987

Prepared By
BARR ENGINEERING CO.
Minneapolis, Minnesota

SECTION III

RESPONSE ACTION MONITORING PLAN

This section of the Remedial Action Plan will describe continuing groundwater monitoring including parameters to be analyzed, analysis procedures to be used, wells to be monitored, frequency of monitoring, and reporting of data.

The samples will be analyzed for the volatile organic compounds (VOC) listed on Table 2 using EPA Method 601 except as noted below. During the first year, samples will be collected four times annually from B15, B16, P17 and P18 and semi-annually from B4, B8, B12, W13, and W14. Once annually, the samples from B15, B16, P17 and P18 will be analyzed using EPA Method 601 and 602 for a complete VOC scan. Other samples will be taken to comply with NPDES permit requirements. Water level elevations will be measured at selected wells as necessary four times per year. The frequency of monitoring may be adjusted after the first year, subject to MPCA approval.

Quarterly reports will be submitted to the MPCA on the tenth day of the first month of the quarter, or as soon thereafter as laboratory data is received for all samples. The quarterly reports will contain lab reports and water elevation data for sampling performed in the previous quarter.

An annual report will be submitted to the MPCA during January. This report will contain summaries of the water quality and water elevation data collected in the year. This data will be presented on tables with data from previous years and on maps showing geographical distribution of the plume. An evaluation of the effect of the pump-out system will be included in the annual report as will recommendations for the next year of monitoring, including modifications in the wells to be monitored and the frequency of monitoring. Monitoring schedules for subsequent years will be subject to MPCA approval and approved changes to the NPDES permit. The report will also include any recommendations for modifications to, or abandonment of, the monitoring or remedial systems.

Traps and columns are replaced as necessary based on the statistical evaluation of the standards and spiked samples. The lamp in the PID is replaced when the RF does not fall within an acceptable range.

SPECIFIC ROUTINE PROCEDURES USED TO ASSESS DATA PRECISION, ACCURACY AND COMPLETENESS

Routines for accuracy are described in Calibration Procedures and Frequency. Routines for precision are described in Data Reduction, Validation and Reporting. Routines for completeness are described in Quality Assurance Objectives.

CORRECTIVE ACTION

When the QC data indicate that the concentration of the check sample falls outside the accepted range or the standard deviation exceeds the acceptance criteria, the source of the problem is located and corrected. Two examples of problems and corrective actions are:

1. If the standard data has a response below the accepted range, the standards and spikes are rerun. If the problem persists after the rerun, new solutions for standards and spikes are prepared and analyzed. The system is checked for leaks and the PID lamp may be replaced.
2. If the baseline has noise or other irregularities, the spargers are cleaned, the purge and trap is checked and replaced. The gas chromatography column is checked and replaced if necessary.

After finding and correcting the problem, the RF is recalculated and the QC check sample re-analyzed.

QUALITY ASSURANCE REPORT

The quality assurance performance will be addressed in the Annual Monitoring report to the MPCA.

RAPNUT/332,0

LABORATORY ANALYTICAL METHODS

The volatile organic compounds will be analyzed using EPA 601 with a Hall detector. The analytical procedures for this method are similar to EPA Method 502.1.

DATA REDUCTION, VALIDATION AND REPORTING

The data reduction scheme for field data is described in Sampling Procedures and for laboratory data in Calibration Procedures and Frequency. The criteria for validating data integrity will be done within the laboratory using procedures described in Calibration Procedures and Frequency. In addition blank samples will be collected and analyzed along with each group of samples submitted to the laboratory. The blank samples will serve as a check of the bottle cleaning procedures and the sample handling techniques. During the collection of the groundwater samples, the bailers will also be checked for visible contamination.

Blanks will be prepared for each sampling trip. Data on the blank samples will be included in the reports.

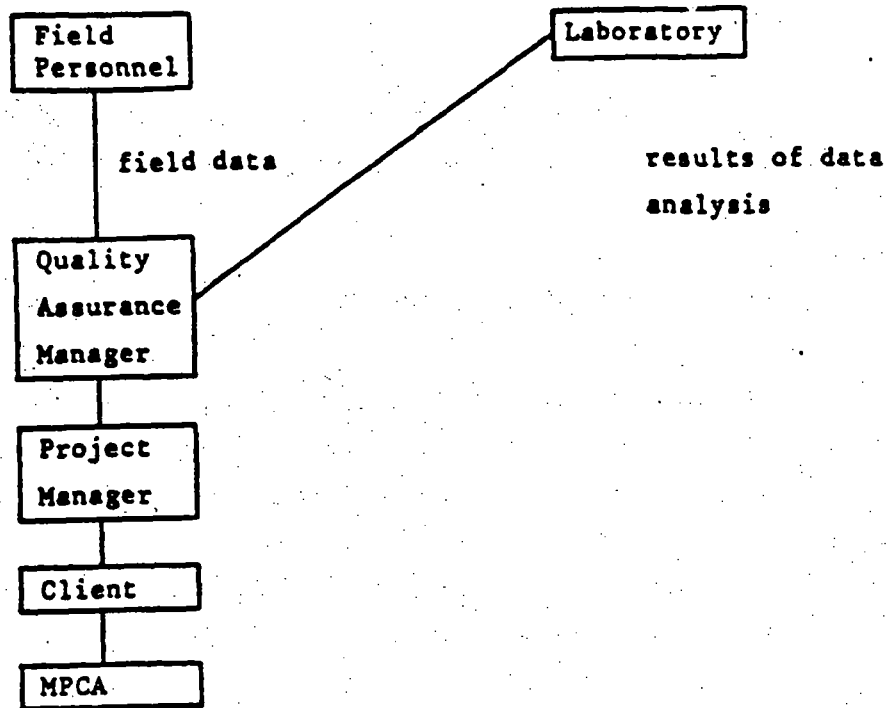
A blind duplicate water sample will be collected from a randomly selected station.

The criteria for identifying and treating outliers is described in Quality Assurance Objectives. The average coefficient of variation will be computed using the formula:

$$C.V. = \left\{ \frac{n \sum \frac{R_i^2}{X_i}}{2n} \right\}^{1/2}$$

where C.V. is the coefficient of variation, n is the number of parameters in the analysis, R_i is the difference of duplicate pair, and X_i is the means of duplicated pair.

The data flow is shown in the flow chart below:



INTERNAL QUALITY CONTROL CHECKS

Internal quality control checks are described in Sampling Procedures and Calibration Procedures and Frequency.

PERFORMANCE AND SYSTEM AUDITS

The QAM conducts performance and system audits on work by PACE Laboratories on a continuing basis. The results of the audits are discussed as problems occur and general issues are discussed at quarterly meetings.

PACE Laboratories conducts internal audits and participates in the EPA audit program for laboratories for the compounds in this study.

PREVENTIVE MAINTENANCE

The instrumentation and equipment used are regularly evaluated to ensure proper operating condition and performance.

16	15	2.602
21	20	2.528
26	25	2.485
31	30	2.457
61	60	2.390
infinity	infinity	2.326

d. The 95 percent limits are calculated as follows:

$$MDL_{lcl} = 0.69 MDL$$

$$MDL_{ucl} = 1.92 MDL$$

where MDL_{ucl} and MDL_{lcl} are the upper and lower 95 percent confidence limits based on seven replicates.

9. Any changes in lab preparation or chromatography that may effect the recovery, cleanup or detection of the compounds requires that this entire section be repeated.

Ongoing Program of Analysis of Spikes, Duplicates and Outside Reference Samples

1. At least 10 percent of all laboratory samples or one per month must be collected in duplicate, spiked and analyzed for the parameters of interest.
2. At least 10 percent of all lab samples or one per month must be collected in duplicate and analyzed for the parameters of interest.
3. The recoveries must be plotted on QC charts which have UCL and LCL limits on them.
4. If the results fall outside those levels, a laboratory out of control (LOC) situation exists.

5. The problem is then identified, corrected, and documented in the LOC notebook.
6. When utilizing liquid extraction methods, one method blank must be analyzed per set or when reagents are changed, to demonstrate that interferences in the system are under control;.
7. For purge and trap, a method blank must be analyzed each day to demonstrate that interferences in the system are under control.
8. Outside reference samples are processed through the total procedure at least once per quarter.
9. When doubt exists as to the identification of a compound, confirmation work is done by a different column, different detector, or mass spectrometer to verify results.

Daily Calibration

Initially, the calibration is performed at three levels with the lowest concentration near the MDL. The response factors of the calibration curve are recorded. The daily response factors are checked against the calibration each day an analyses is run.

1. On a daily basis, a single concentration of a standard is analyzed and the response factor must agree within 10 percent of the calibration curve. If not, the standard is remade or a new three level calibration curve is prepared.
2. Each day the calibration standard is verified by analyses of an additional outside standard such as an EPA concentrate.

7. The upper and lower control limits and the average percent recovery are utilized to construct control chart for the ongoing quality control.

8. The method detection limit is calculated.

a. Seven replicates prepared in blank water at 1 to 5 times the estimated detection limit are analyzed.

b. The variance (S^2) and standard deviation (S) of the replicate are calculated as follows:

$$S^2 = \frac{1}{n-1} \left[\sum_{i=1}^n x_i^2 - \frac{\left(\sum_{i=1}^n x_i \right)^2}{n} \right]$$

$$S = [S^2]^{1/2}$$

where the X_i , $i=1$ to n are the analytical results obtained from n samples and $\sum X_i^2$ refers to the sum of the x values from $i=1$ to n .

c. The method detection limit (MDL) is computed as follows:

$$MDL = t(n-1, 1-a = .99) * S$$

t-STUDENTS T VALUES AT 99% CONFIDENCE LEVEL

<u>Number of Replicates</u>	<u>Degrees of Freedom (n-1)</u>	<u>t(n-1, 1-a=.99)</u>
7	6	3.143
8	7	2.998
9	8	2.896
10	9	2.821
11	10	2.764

Samples remain in their original locations until the report is completed. Then they are removed and stored at room temperature for four weeks after the report is sent. If there are no questions concerning the results or no further analyses are requested, after this time, the samples are properly discarded.

CALIBRATION PROCEDURES AND FREQUENCY

Initial Demonstration Laboratory Capability

To demonstrate the capability of the laboratory to generate valid data, the following steps need to be performed:

1. A spike solution containing the parameters to be tested is prepared in an appropriate solvent at a concentration level 1,000 times greater than the analyses range. The concentration of the spike solution is selected so that it will yield samples that are spiked at least 2* the detection level.
2. The spike solution is diluted a thousand fold into reagent water and at least seven replicates are carried through the analyses.
3. The average percent spike recovery (R) and the standard deviation percent (s) are calculated for the replicates.
4. If additional spiked replicates are analyzed at several concentration levels, the average percent recovery (R) and standard deviation percent(s) for these are also calculated.
5. The calculated R and s values are compared to EPA literature and/or any other literature values available.
6. The upper and lower control limits are calculated at $\pm 3 * S$.

Next, a sample check-in sheet is filled out. This sheet contains all pertinent information about the client, sample collection, sample matrix, analyses to be performed and number of bottles received. To complete the check-in procedure, the samples name is entered on each data sheet corresponding to the parameter to be analyzed. Each raw data sheet contains all the data necessary to perform the calculations for the final results. There is also a "comments" section that allows for special instruction in sample analysis or for observations made during analysis that may impact the final result. Before samples are stored, they are rechecked to make sure they are in the correct container and are properly preserved.

Maintenance of Custody

PACE Laboratories, Inc. has implemented standard operating procedures to assure the integrity of both sample and data so that they are not degraded or disclosed to unauthorized personnel. In order to ensure that this policy is maintained, the laboratory facilities are under controlled access. Only employees of PACE Laboratories, Inc. are allowed access to the laboratory facilities. Unauthorized personnel must register at the front desk and obtain a visitors badge prior to entering the laboratory. Visitors are accompanied at all times when in the laboratory by an employee of PACE Laboratories, Inc. The building is locked and secured at the end of each working day. Keys to the building are issued only to select personnel. Samples are stored either in a large walk-in cooler at 4°C, at room temperature or in ventilated hazardous waste cabinets. The walk-in coolers and hazardous waste cabinets have locks and are secured at the end of each working day by the sample custodian.

Samples are removed from their proper storage location by the analyst and are returned to the storage area immediately after the required sample volume has been taken. This minimizes unnecessary time spent searching for samples and helps prevent matrix degradation from prolonged exposure to room temperature.

analyses of the samples. He also maintains proper custody of samples and analytical data to verify the integrity of reports submitted to our clients.

When samples are received at the laboratory and they are accompanied by a chain of custody form, the sample custodian will initiate the following steps:

1. Verify that each sample was in the packing container as recorded on the chain of custody record.
2. Document on the Chain of Custody form any breaking of seal or sample bottles which may have occurred during transport to the laboratory.
3. If all data and samples are correct, sign and date the "received at laboratory by" box. The exact number of sample containers received by the laboratory is recorded for each sample.

All samples received by PACE Laboratories, Inc. are identified and labeled showing the name of the client, sample location or code, date received and the preservative added to the bottle. Samples are entered into the log book which contains the following:

1. A number assigned to each sample. Numbers begin with 1 on the first day of the year.
2. Identification of the client by name.
3. Date the sample was received at the laboratory.
4. Number of bottles received for each sample.
5. Initial of person who checked in samples.

Field Logs

A field log will be maintained throughout the program. Field measurements and other pertinent information about field activities will be recorded. The Field Log Cover sheet is shown in Attachment 2. The Field Log Data sheet is shown in Attachment 3.

Chain of Custody

The field sampler will be responsible for custody of samples until they are properly dispatched to the laboratory or turned over to an assigned custodian. The field sampler will ensure that possession or sight of sample containers is maintained at all times or that the containers are stored in a securely locked area. A chain of custody form is shown in Attachment 4.

The chain of custody procedures will apply to all samples collected. All entries will be completed in indelible ink. The original chain of custody record will be sealed in a waterproof container and shipped inside the sealed transportation case. A copy of the record will be retained by the sampling team.

Photo Documentation

Color slides or photographs will be taken to show all sampling locations once per year. Written documentation on the photographic record will include photographer's initials, project name, date and sampling site.

Laboratory Chain of Custody

Control of Incoming Samples

PACE Laboratories, Inc. has a sample custodian whose primary responsibility is to document receipt of samples, initiate the appropriate log-in procedures described below, assure proper documentation and prompt

Three to five vials will be filled at each sampling station. Sample labels are filled out with pencil.

The volatile organic vials will be prepared by washing the vials with soap and water, rinsing with tap water, distilled water and baking in a muffle furnace at a temperature not less than 450°C for at least 60 minutes. The vials will be cooled in a desiccator over a bed of activated carbon prior to capping. The septums will be placed with teflon side facing up on a sheet of aluminum foil with the dull side of the foil facing up and baked at a temperature not less than 200°C for at least one hour. The septums will be collected in a desiccator over a bed of activated carbon prior to assembling. The vials, caps and septums will be assembled in a low solvent environment. The vials will be wrapped in aluminum foil with the shiny side out.

The following instruments or their equivalent will be used for analyses in the field:

1. Orion Research Model 407A pH Meter
2. YSI Model 33 Specific Conductance & Temperature Meter

Safety equipment necessary to meet the requirements of the site safety plan will be used on the job site. Safety gear consists of dermal protection.

CHAIN OF CUSTODY

Field Chain of Custody

Sample Identification

A label will be attached to each sample container before the sample is collected. The label will contain the sampling station identification, date taken, project name, and sampler's initials. Labels will be legible and completed in graphite pencil.

A minimum of five well volumes will be removed from the well during a stabilization test. If a pumped well has not stabilized after 50 volumes have been removed or 30 minutes of purging and the well stabilization readings do not demonstrate a trend (slowly rising or falling pH, temperature or conductance), stabilization will be discontinued and the samples will be collected.

Samples will be collected using a bailer with stainless steel wire. The wire will be on a downrigger to prevent contact with the ground. Each specially prepared bailer will only be used to collect samples from one well.

Pumps, suction hoses, and tubing will be cleaned with soap and water and rinsed with tap water prior to use.

Each bailer will be cleaned in the laboratory prior to use by washing with soap and water and rinsing sequentially with tap water and distilled water. The bailers will be baked at 103° for at least one hour. The bailers will be transported to the field wrapped in aluminum foil with the shiny side out. Each specially prepared bailer will only be used to collect the samples from one well or surface water station before being returned to the laboratory for cleaning according to the previously described procedure.

The pump-out wells will be sampled at the sampling ports in Manhole A, which is shown on Figure 2. Because the pump-out wells are continuously being purged, no stabilization tests will be done before sample collection.

Sample Packaging

Volatile organic samples will be collected in septum vials. No head (air) space is left in the sample vial. If headspace is found in a vial, the vial is discarded and a replacement is collected. After the volatile organic samples have been collected, the septum vials will be individually wrapped in aluminum foil and sealed as sample sets in Ziploc plastic bags.

SAMPLING PROCEDURES

Sampling Order

A sampling order will be established prior to sampling and observed during collection of samples. Monitoring wells will be sampled in order of clean to dirty.

Sample Collection

The following methods will be used to obtain samples. The sampler will wear new clean disposable gloves at each sampling station. The fewest possible number of people will handle the sample.

Prior to sampling a monitoring well, the depth to water from the top of the riser pipe will be measured to the nearest 0.1 of a foot. Monitoring wells will be purged prior to sampling using a centrifugal pump or bailers.

Pump inlets will be constructed of stainless steel or teflon. Stainless steel bailers with bottom filling teflon check valves or teflon bailers with bottom filling check valves will be used in collecting samples.

Stabilization tests will be conducted while purging a well. A well stabilization record form is given in Attachment 1. Specific conductance, pH, and temperature will be measured in the field at one well volume intervals until three successive readings yield equivalent values within the following range for each parameter:

- Specific Conductance: 0-500 scale ± 10 umhos/cm
(temperature corrected) 500-5000 scale ± 10 umhos/cm
- pH ± 0.1 pH units
- Temperature $\pm 0.5^{\circ}\text{C}$

SECTION II

QUALITY ASSURANCE PROGRAM PLAN

PROJECT DESCRIPTION

A quality assurance program plan (QAPP) is required as part of the RAP for the Nutting site in Faribault, Minnesota. The QAPP describes the procedures for collecting and analyzing water samples as part of the monitoring for the site. The purpose of monitoring is to evaluate the effectiveness of the pump-out system.

PROJECT ORGANIZATION AND RESPONSIBILITY

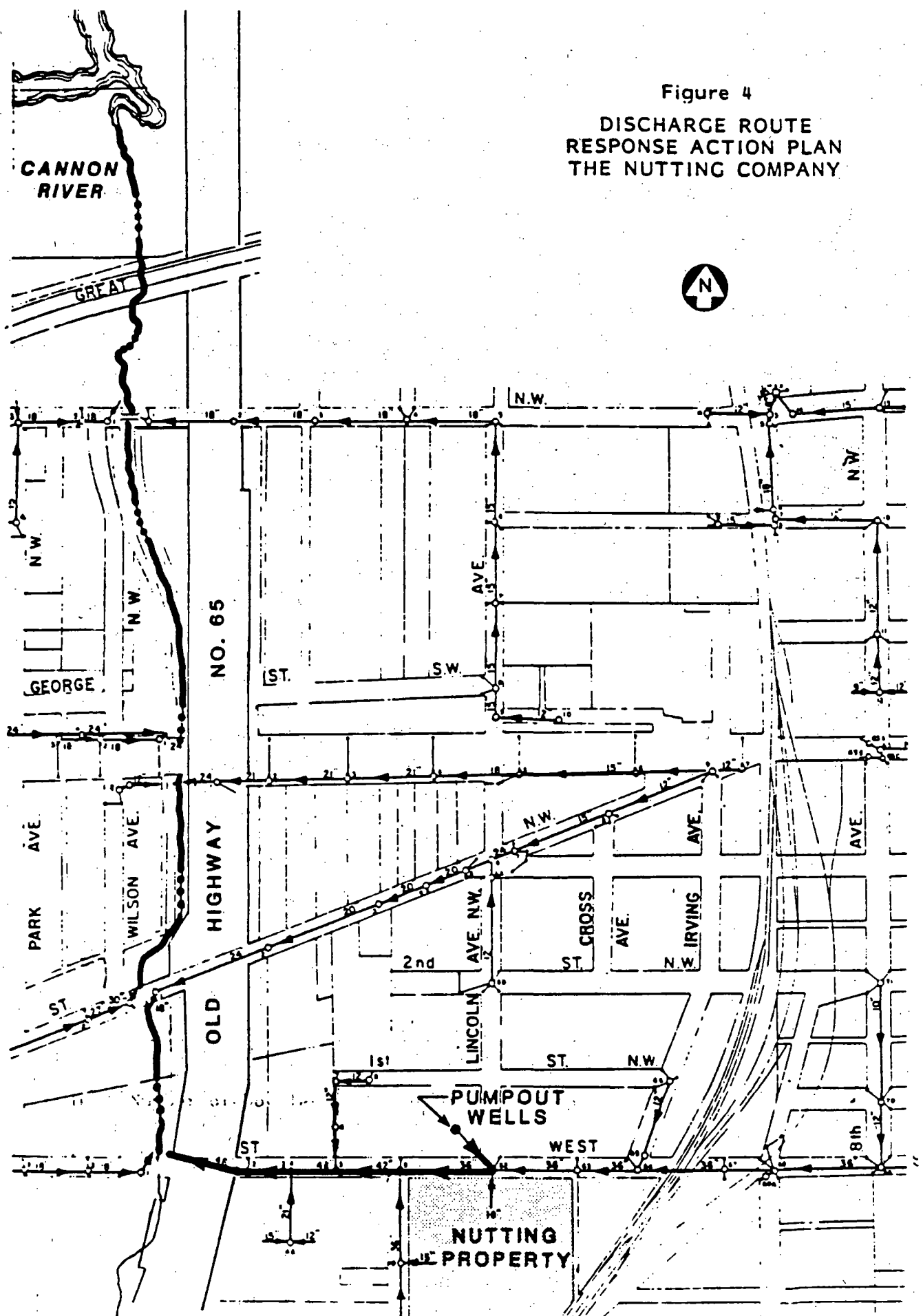
Barr Engineering Co. will be responsible for the design of the monitoring wells and pump-out system and the collection of the water samples. PACE Laboratories will be responsible for the analysis of the water samples.

QUALITY ASSURANCE OBJECTIVES FOR MEASUREMENT OF DATA IN TERMS OF PRECISION, ACCURACY, COMPLETENESS, REPRESENTATIVENESS, AND COMPARABILITY

The water samples will be analyzed for the volatile organic compounds listed on Table 2. The method of analysis will be EPA 601.

The goals of accuracy, precision, and completeness for the sample data are the same for all parameters. Accuracy is acceptable as long as the laboratory internal quality control and audit samples show the analytical results to be within the 95 percent confidence limits. The precision is evaluated by computing an average coefficient of variation for the masked duplicate samples. If this average coefficient of variation exceeds 25 percent, the data is considered unreliable and is footnoted as such when published. The completeness of the data is acceptable if satisfactory results are obtained for 90 percent of the samples.

Figure 4
DISCHARGE ROUTE
RESPONSE ACTION PLAN
THE NUTTING COMPANY



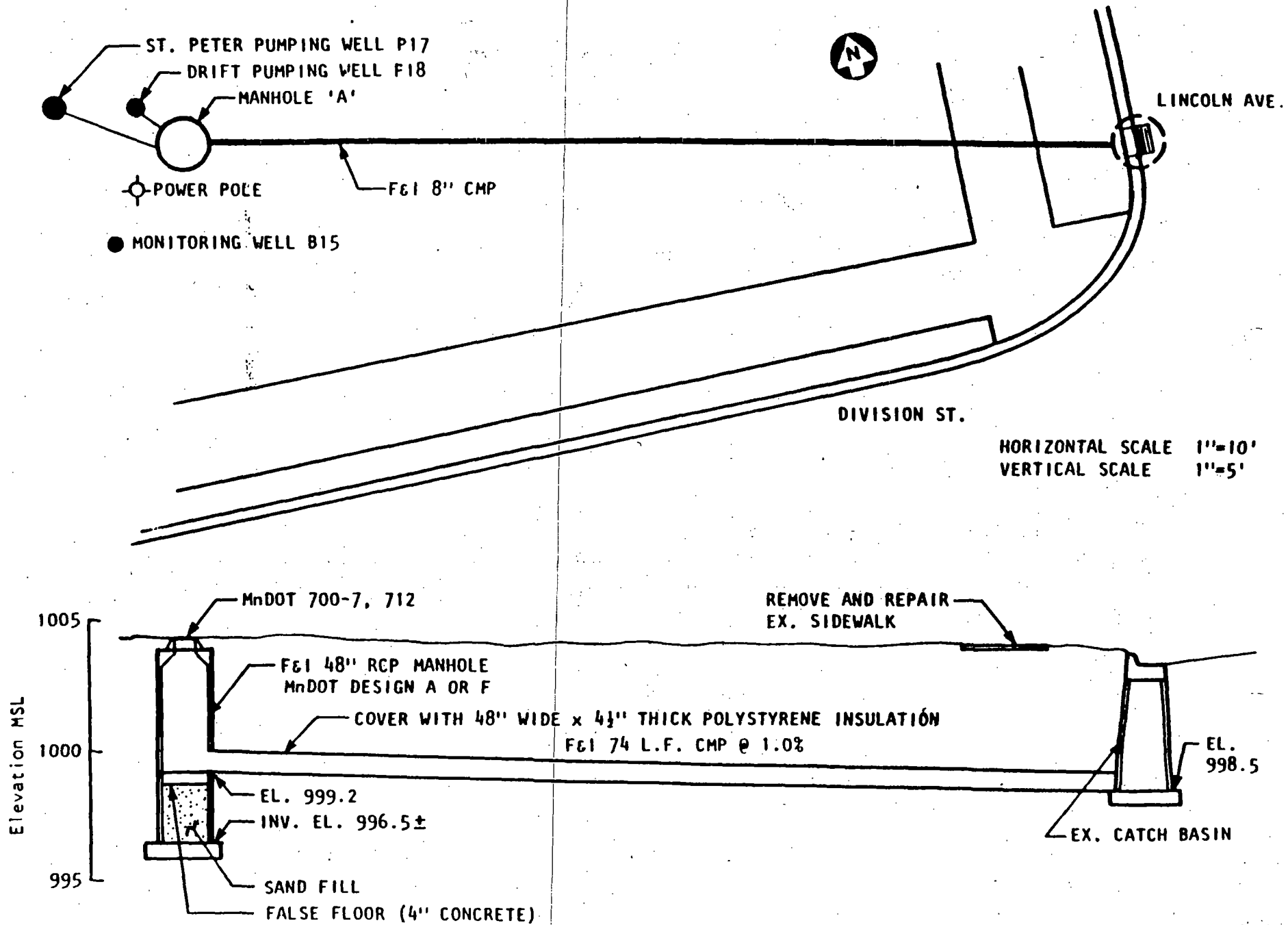


Figure 3

PUMPOUT DISCHARGE CONNECTION
RESPONSE ACTION PLAN
THE NUTTING CO.

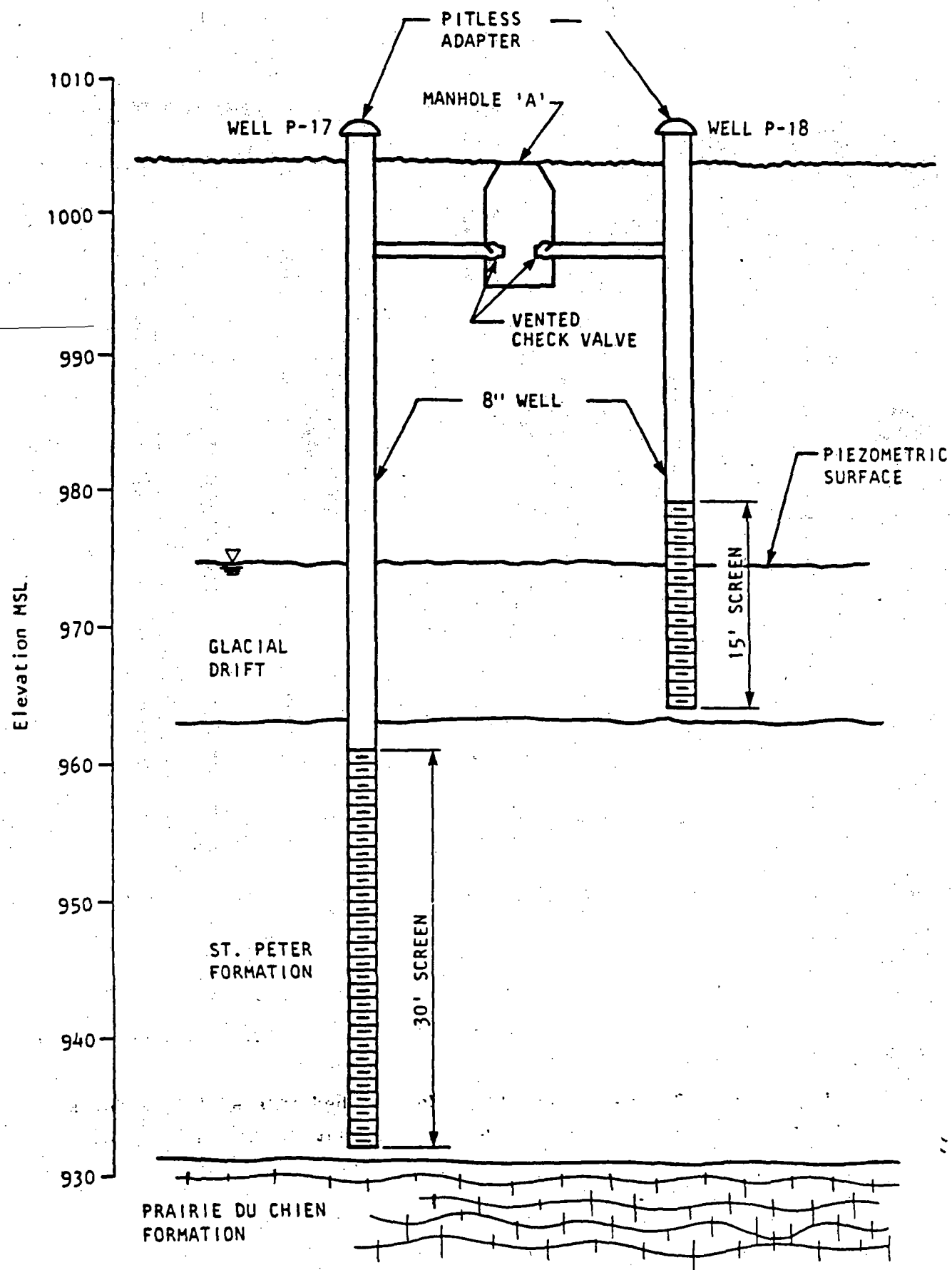
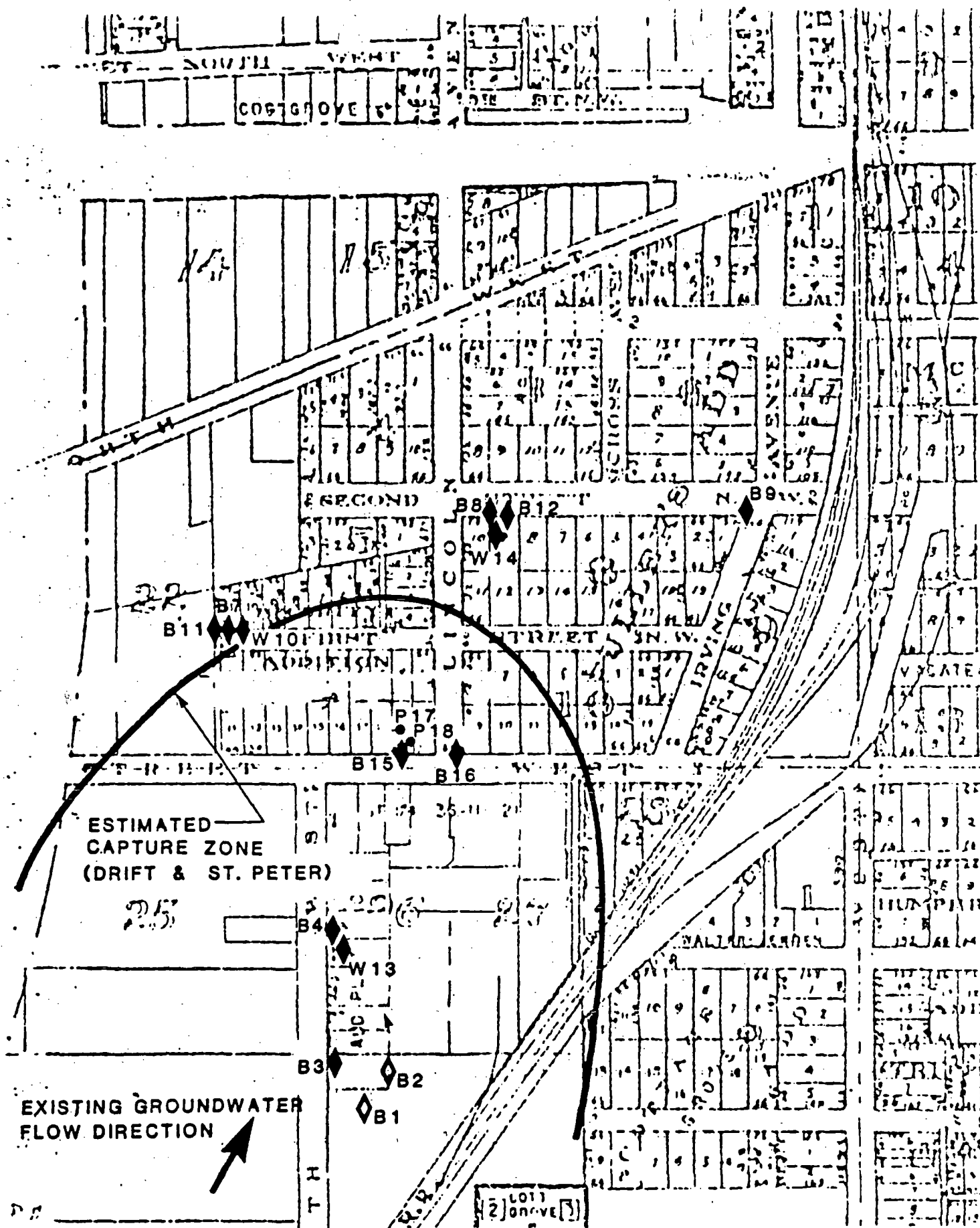


Figure 2
PUMPOUT WELL CONSTRUCTION
RESPONSE ACTION PLAN
THE NUTTING COMPANY



- ◆ Monitoring Wells
- Pumping Wells
- ◆ Monitoring Wells to be Abandoned

Figure 1
MONITORING WELLS AND REMEDIAL ACTIONS
RESPONSE ACTION PLAN
THE NUTTING COMPANY

TABLE 1
SCHEDULE OF REMEDIAL ACTIONS

<u>Task</u>	<u>Completion Time weeks after MPCA approval*</u>
Construct Pump-Out Well P17	Complete
Construct Pump-Out Well P18	4 weeks
Connection to Storm Sewer System	4 weeks
Abandon Monitoring Wells B1, B2	26 weeks
Restoration, Seeding	26 weeks

*Including NPDES permit issuance.

All existing monitoring wells will be maintained until the MPCA grants approval for abandonment. The annual monitoring report to the MPCA (see Section III, Response Action Monitoring Plan) will recommend wells for abandonment. When such approval is granted and the monitoring wells are abandoned, they will be abandoned in conformance with the Minnesota Well Code.

SCHEDULE

Table 1 illustrates the proposed schedule of Remedial Actions. Weather permitting, it is desired to complete these actions at the earliest possible date to assure that the contaminant plume is controlled to the greatest degree possible. Abandonment of monitoring Wells B-1 and B-2 can be deferred until warmer weather.

Discharge System

From Manhole A the discharge is piped by gravity to the catch basin located in the northwest quadrant of the intersection of Lincoln Avenue and Division Street (see Figure 3). From the catch basin the discharge will flow approximately three blocks west along Division Street to Old Trunk Highway 65 where it discharges to Crocker's Creek and flows north to the Cannon River, an additional distance of approximately 3/4 mile. The discharge route is shown in Figure 4. During the pumping test, concentrations of volatile organic contaminants were on the order of 20 ppb. This is far below the level at which contaminants would present any risk due to volatilization or physical contact; therefore, no treatment is planned. However, to encourage aeration in the discharge line, the connection between Manhole A and the city catch basin will be constructed of 8-inch diameter corrugated metal pipe to assure turbulent flow in the discharge line. In the unlikely event that future concentrations of volatile contaminants in the discharge water would require further aeration of the discharge, a false bottom will be provided in Manhole A which would facilitate installation of an aeration system.

Closure Plan

Monitoring Wells B-1 and B-2 were temporarily abandoned following excavation of sludges from the disposal pit in 1980. Both wells are constructed of 1 1/2-inch PVC and extend into the St. Peter Formation adjacent to the old disposal pit. Since the drift and St. Peter aquifers are not considered separate units in this area, it is proposed to permanently abandon both wells by backfilling with a fine sand and bentonite mixture.

Except for the abandonment of monitoring Well B-1 and B-2 no additional closure activities are necessary. Past closure activities for the disposal pit area are considered to be complete and adequate in their present form.

the St. Peter from the drift which affected the calculated permeabilities. Available data was reviewed and approximate modeling techniques were applied to estimate the permeability of the St. Peter Formation. This work suggested that the published values for permeability (on the order of 20 feet per day) were applicable for design of the St. Peter pump-out well.

Pump-Out System

Figure 2 illustrates the construction of Wells P-17 and P-18. Well P-17 extends to within 3 feet of the bottom of the St. Peter formation and is screened over the bottom 30 feet of its depth. Well P17 will be continuously pumped at a rate of up to 30 gpm, to create a capture zone in the St. Peter approximately shown in Figure 1. This capture zone is similar to that anticipated in the RI/FS report. In order to obtain a similar capture zone in the glacial drift, drift pumping well P18 will be placed near St. Peter Pumping Well P17. The Drift Well P18 will be screened over the full saturated thickness of the drift and will be pumped at approximately 20 gpm to create the capture zone shown in Figure 3.

Well P17 has been, and Well P18 will be, constructed in accordance with the Minnesota Well Code. Each well is to be fitted with a pitless adapter and will discharge to Manhole A shown in Figure 3.

Wells P17 and P18 will be pumped continuously until the concentration of Trichloroethylene (TCE) in Wells B15 and B16 is reduced to 50 parts per billion (ppb) or less for two (2) successive samplings. Sampling and analysis of Wells B15 and B16 shall be in accordance with Section III, Response Action Monitoring Plan, of this RAP. A conservative interpretation of laboratory data, including quality control samples, will be utilized in determining the concentration of TCE in Wells B15 and B16. In the event that pumping is discontinued, it will be resumed if, in implementation of the monitoring plan, the concentrations of TCE in Wells B15 and B16 are found to exceed 50 ppb. During periods when pumping is discontinued, the monitoring schedule will be as shown in Section III of this RAP, or as subsequently approved by MPCA.

pump-out well at that location could intercept the contaminant plume leaving the Nutting property and mitigate the most significant portion of any contaminant plume which might be downgradient of the proposed pump-out well. To verify the preliminary design, a pumping test was conducted as part of final design for the pump-out system.

Pumping and Slug Tests

A pump test was conducted using Well P-17 to determine (1) the aquifer characteristics of the St. Peter Formation, (2) the pumping capacity of the well, and (3) the effects of St. Peter pumping on drawdown in the overlying drift. Well P-17 was pumped for approximately 75 hours. Water levels in the pumping well, Monitoring Wells B-15 and B-16 (drift wells) downgradient Monitoring wells B-8 (St. Peter) and W-14 (Prairie du Chien) were measured continuously, beginning prior to pumping and continuing throughout the duration of the pumping test and for two days during recovery.

Directly above the St. Peter is a coarse unit of glacial drift in which little drawdown was observed during the pumping test. The drift was apparently sufficiently transmissive to supply water to the St. Peter with few drawdown effects and the size of the capture zone of Well P-17 within the drift was uncertain. It was determined that an additional pump-out well in the drift would be necessary to guarantee capture of any contaminant plume leaving the Nutting property. In order to determine the pumping rate and well design of the second pump-out well, slug tests were conducted in drift Monitoring Wells B-15 and B-16. The permeability of the drift aquifer was estimated to be 105 feet per day in the vicinity of the pumping well.

Analysis of the drawdown and recovery data from the pump test was inconclusive as to the permeability in the St. Peter Formation. Calculated permeabilities for the St. Peter were about one order of magnitude below those commonly felt to apply to the formation and published in various studies. However, sustained pumping rates were greater than those which could be supported by the aquifer if the calculated permeability were realistic. Thus, it was concluded that there was substantial recharge to

INTRODUCTION

This Response Action Plan (RAP), submitted on behalf of The Nutting Company (Nutting), will specify the methods and schedules for Remedial Action (RA) at the Nutting site. Section I will summarize the design of the remedial measures and the schedule for their implementation. Section II will present a Quality Assurance Project Plan (QAPP) to be utilized during implementation and monitoring. Section III, the monitoring plan, will specify short or long-term monitoring necessary to determine the status and effectiveness of the RA's which have been implemented.

SECTION I REMEDIAL DESIGN

As a result of the Remedial Investigation (RI) and a limited Feasibility Study (FS) of alternative remedies, a pump-out system was selected as the most cost-effective remedy for the site. The pump-out system would intercept and mitigate the identified contaminant plume in the groundwater as it leaves the Nutting property. No other remedies were determined appropriate as a result of the RI/FS. The disposal pit which is believed to be the primary source for the observed contaminant plume was previously excavated and closed in accordance with procedures approved by the MPCA. Abandonment of two unused monitoring wells is included in the closure plan.

REMEDIAL ACTIONS

The location of remedial activities is illustrated in Figure 1. In addition to two pumping wells (P-17 and P-18), a discharge system will be connected to the adjacent city storm sewer. Monitoring wells B-1 and B-2, which were temporarily abandoned in 1980 will be excavated and permanently abandoned in accordance with Minnesota Well Code.

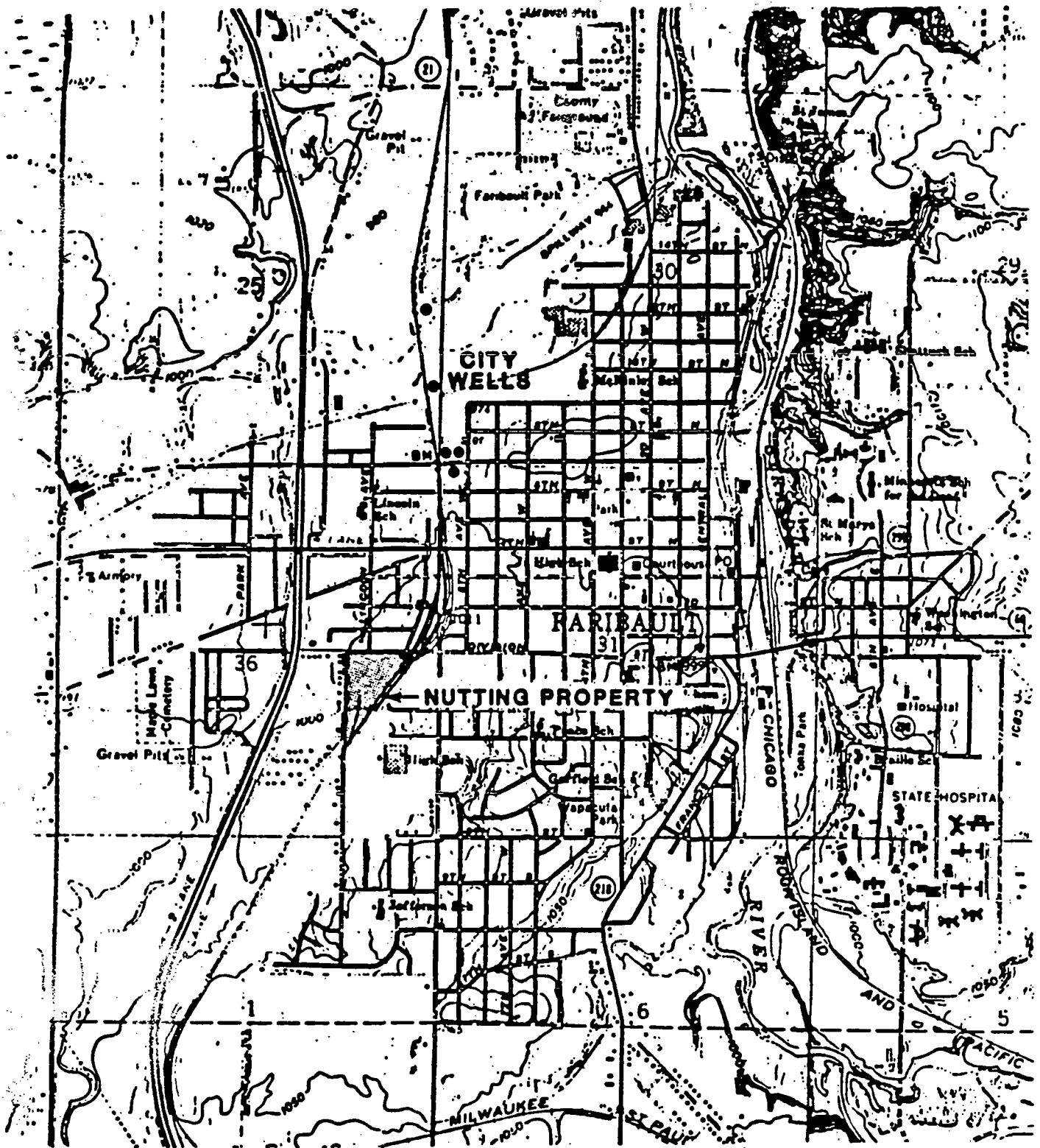
The RI/FS determined that the most appropriate location for a pump-out system would be north of Division Street and west of Lincoln Street on property owned by Nutting. Preliminary design suggested that a single

FIGURES

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TABLES

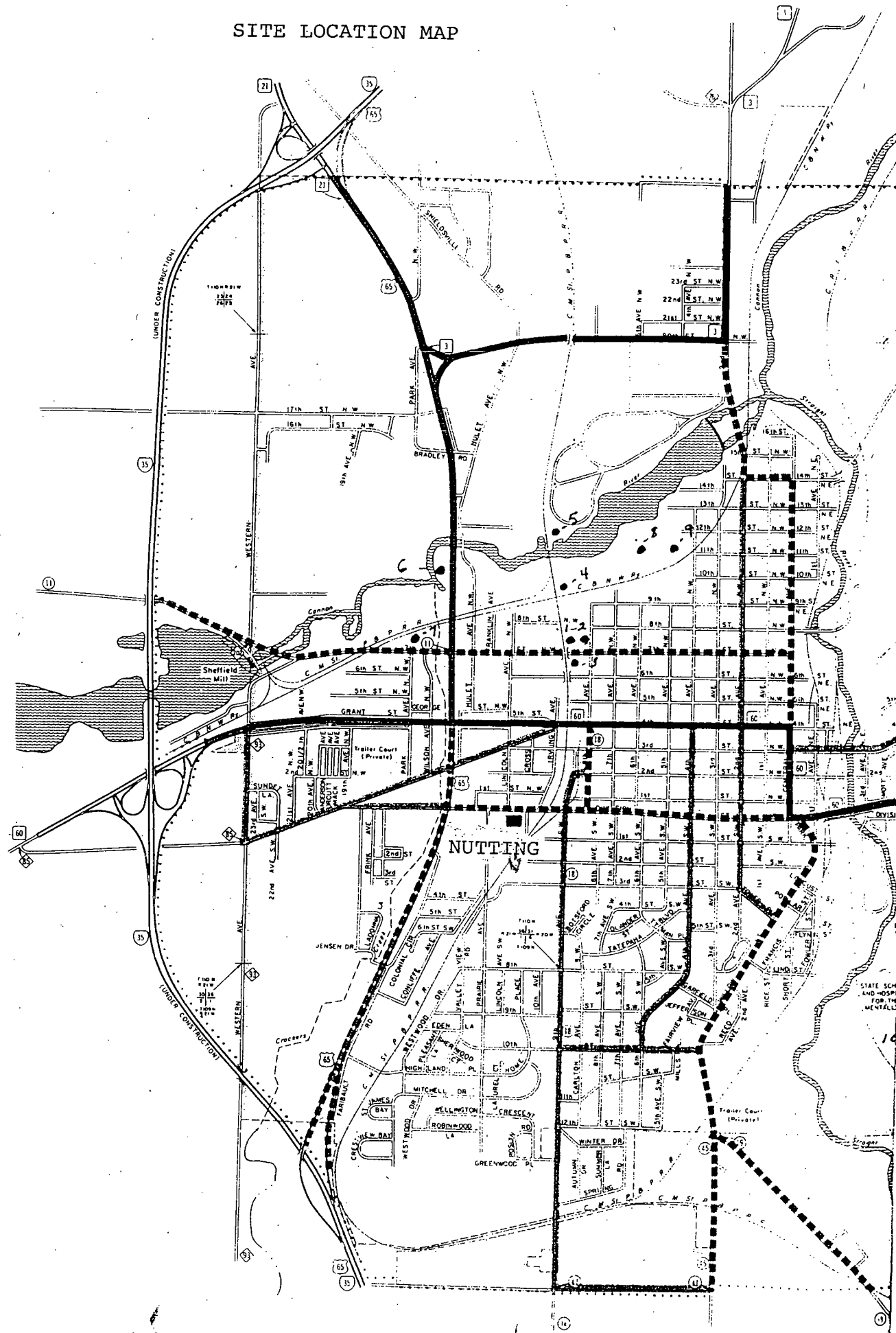
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0 2000
Scale in Feet

LOCATION MAP
The Nutting Company
Faribault, Minnesota

SITE LOCATION MAP



STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the matter of
Nutting Truck and Caster Hazardous Waste Site

RESPONSE ORDER
BY CONSENT

Proceedings Under Sections 17
and 18 of the Minnesota
Environmental Response and
Liability Act, Minn. Stat. Ch. 115B.

Based on the information available to the parties on the effective date of this RESPONSE ORDER BY CONSENT, and without trial or adjudication of any issues of fact or law, the parties hereto agree and it is hereby ordered as follows:

I.

Jurisdiction

This RESPONSE ORDER BY CONSENT (Order) is issued pursuant to the authority vested in the Minnesota Pollution Control Agency (MPCA) by the Environmental Response and Liability Act (ERLA), Minn. Stat. Ch. 115B, and by Minn. Stat. Chs. 115 and 116.

On the basis of the results of the testing and analyses described in the Statement of Facts, infra, and MPCA files and records, the MPCA has determined that (1) the Nutting Truck and Caster Hazardous Waste Site located in Faribault, Minnesota (Nutting Site) constitutes a facility within the meaning of Minn. Stat. § 115B.02, Subd. 5; (2) the wastes and substances found or disposed of at the Nutting Site are hazardous substances within the meaning of Minn. Stat. § 115B.02, Subd. 8 and 9; (3) there

have been one or more releases and continue to be threatened releases, within the meaning of Minn. Stat. § 115B.02, Subd. 15, of these hazardous substances from the Nutting Site; (4) with respect to those releases, The Nutting Company (Nutting) is a responsible person within the meaning of Minn. Stat. § 115B.03; (5) the actions to be taken pursuant to this Order are reasonable and necessary to protect the public health or welfare or the environment; and (6) the time periods for beginning and completing the actions required by this order are reasonable.

II.

Parties

This Order shall apply to and be binding upon the following parties:

- A. The Nutting Company; and,
- B. The Minnesota Pollution Control Agency.

III.

Statement of Facts

For purposes of this Order, the following constitutes a summary of the facts upon which this Order is based. None of the facts related herein shall be considered admissions by either party with respect to any claims unrelated to or persons not a party to this Order.

- A. The Nutting Site is located at 1221 West Division Street in Faribault, Minnesota. A map of the Nutting Site is attached as Attachment 1.

B. The Nutting Site is listed on the National Priority List with a Hazard Ranking System score of 38.

C. Nutting produced a variety of hand carts and caster wheels over the past 94 years at its plant in Faribault. The manufacture of these products lead to the generation of waste solvents.

D. Beginning in 1959 Nutting began disposing of waste materials, including waste solvents, in a disposal pit located on the southern tip of the Nutting property. In response to a 1979 notice of non-compliance, Nutting excavated the contents of the pit, backfilled the pit with clean fill, and capped the area with an impervious material thereby removing the main source of ground water contamination.

E. Samples collected by Nutting at the time of the excavation confirmed that releases from the pit to the ground water are from the Nutting facility. The ground water is contaminated primarily by 1,1,2 trichloroethylene (TCE), and to a lesser extent by cadmium, lead, chromium, methylene chloride, and xylene. TCE in ground water was detected at concentrations of up to 570 parts per billion (ppb), and is the main contaminant of concern.

F. Beginning in 1982, analysis of Faribault municipal water supply wells confirmed the presence of TCE. This discovery led MPCA staff to place a high priority on defining the extent and magnitude of contaminated ground water originating from the Nutting property and other sources.

G. On September 27, 1983 a Request for Response Action (RFRA) was issued to Nutting, and on April 26, 1984 a Consent Order (Order) was executed which required Nutting to conduct a Remedial Investigation (RI) to assess the extent and magnitude of ground water contamination, to determine whether the Nutting Site contributed to contamination of the Faribault municipal water supply wells and to reimburse the MPCA for its expenses. Nutting has fully completed its obligations under the April 26, 1984 Order.

H. The April 26, 1984 Consent Order required the Nutting Company to conduct additional remedial investigations to determine the extent of contamination originating from the Company's property and to determine whether the Company was or was not the source of trichloroethylene and other hazardous substances detected in the Faribault municipal wells beginning in 1982. Nutting submitted a RI Final Report, the data from which indicates that contamination from the Nutting property is not the source of TCE or other hazardous substances measured at the Faribault municipal water supply wells. The RI concluded that response actions are needed to mitigate localized TCE ground water contamination. The RI Final Report was approved by the MPCA Commissioner by letter dated October 15, 1986.

I. Nutting submitted a Feasibility Study (FS) which analyzed alternative remedies and documents selection of a ground water pump out system as the most appropriate response action.

J. On February 6, 1987 Nutting submitted a proposed Response Action Plan (RAP) which details the installation and operation of the ground water pump out system. The MPCA approved the RAP on March 24, 1987.

IV.

Definitions

Unless otherwise explicitly stated, the definitions provided in Minn. Stat. Ch. 115B shall control the meaning of the terms used in this Order.

V.

Scope of Order

This Order shall govern the following matters:

- A. Implementation of Response Actions as described in Part VI and Exhibit A to this Order; and
- B. Reimbursement of the MPCA's costs.

These matters are set forth in more specific detail in Parts VI and XX, and Exhibit A to this Order. In the event of any ambiguity or inconsistency between Parts VI and XX and Exhibit A to this Order, the Exhibit shall govern.

Matters other than those described above are not within the scope of this Order.

VI.

Response Action Implementation

Nutting shall implement the Response Action (RA) in accordance with the requirements and time schedules set forth in

Exhibit A to this Order. Exhibit A is appended to and made an integral and enforceable part of this Order. The purpose of implementing the selected RA is to abate or minimize the release or threatened release of hazardous substances associated with the Nutting Site.

VII.

Review and Approval of Submittals

The review of each submittal, document, report, or schedule (collectively referred to hereafter as "Submittal") which is required to be submitted to and reviewed by the MPCA Commissioner shall be as follows:

A. The MPCA Commissioner shall review each Submittal made by Nutting as required by this Order within thirty (30) calendar days of receipt and notify Nutting in writing by the thirty-first calendar day, or the first working day thereafter, of his approval, disapproval, or modification of the Submittal. In the event the Submittal is approved, it shall become an integral and enforceable part of this Order. In the event the Submittal is disapproved in whole or part, the MPCA Commissioner shall notify Nutting and shall state the necessary amendments or revisions and the reasons therefor. In the event that the Submittal is modified, the MPCA Commissioner shall notify Nutting of the specific modification(s) made to the Submittal and the reason(s) therefor.

B. Within twenty-one (21) calendar days of receipt of any notice of disapproval or modification, or on the first working day thereafter, Nutting shall (1) submit revisions to correct inadequacies, (2) respond to the modifications or (3) state in writing the reasons why the Submittal, as originally submitted, should be approved.

C. If, within twenty-one (21) calendar days from the date of Nutting's submission under paragraph B, above, or the first working day thereafter, the parties have not reconciled all issues with respect to the Submittal, the MPCA Commissioner shall make final modifications of the Submittal as he deems necessary. Subject to the provisions of Part VIII, final modifications made by the MPCA Commissioner shall become integral and enforceable parts of this Order.

D. All Submittals or modifications thereto shall be technologically feasible and in accordance with sound engineering practices.

E. The MPCA and Nutting shall provide the opportunity to consult with each other during the review of Submittals or modifications.

F. In reviewing all Submittals, making any final modifications or issuing any order under Part VIII the MPCA shall comply with the requirements of Minn. Stat. § 116.07, Subd. 6 (1984).

VIII.

Resolution of Disputes

If a dispute arises as to any part of this Order, including any final modification or disapproval of Submittals, the procedures of this Part shall apply. In addition, during the pendency of any dispute, Nutting shall continue to implement those portions of the RA which the MPCA Commissioner determines can be reasonably implemented pending final resolution of the issue(s) in dispute.

A. Nutting shall, within twenty-one (21) days of the date of the MPCA action which lead to the dispute, provide the MPCA Commissioner with a written statement setting forth the information Nutting is relying upon to support its position.

B. Following receipt of Nutting's statement under paragraph A, the MPCA Commissioner shall issue an order with respect to the issue(s) in dispute.

C. Nutting shall, within fourteen (14) days of the date of issuance of the MPCA Commissioner's order, notify the MPCA Commissioner whether Nutting intends to comply with the MPCA Commissioner's order. In the event that Nutting does not notify the MPCA Commissioner within fourteen (14) days of the date of issuance of the MPCA Commissioner's order, Nutting's failure shall be construed as a waiver of its right to challenge the order, in such an event, the MPCA Commissioner's order shall become an integral and enforceable part of this order.

D. If, within fourteen (14) days of date of issuance of the MPCA Commissioner's order, Nutting notifies the MPCA Commissioner that it does not intend to comply with the MPCA Commissioner's order, the MPCA shall, within forty-five (45) days of the date that Nutting's notice was received, notify Nutting as to whether the MPCA intends to do any work which Nutting has notified the MPCA it will not undertake during the pendency of the dispute or which is in dispute.

E. If the MPCA elects to do any work pending resolution of the dispute, the MPCA may seek to recover any reasonable and necessary expenses incurred by the MPCA as provided by Minn. Stat. § 115B.17, Subd. 6 (1984). If the MPCA elects to do any work, there shall be no preenforcement review of the dispute and review of the issue(s) in dispute shall be limited to any cost recovery action which may be brought by the MPCA under Minn. Stat. § 115B.17, Subd. 6 (1984).

F. If the MPCA elects to not do any work required by this Order during the pendency of a dispute, Nutting may bring an action challenging the MPCA Director's order. Any such action must be brought within thirty (30) days of receiving notice that the MPCA does not intend to do the work required by this Order. Review of the MPCA Director's order shall be a de novo proceeding, although it is understood that Nutting shall not challenge the contractual nature of this Order. If Nutting does not file an action challenging the MPCA Director's order within the allotted

time period, Nutting's failure shall be construed as a waiver of its right to seek de novo court review and the MPCA Director's order shall become an integral and enforceable part of this Order.

IX.

Permits

A. The implementation of this Order may require the issuance of governmental permits, authorizations or orders (hereinafter referred to as "permit") by the MPCA, other State agencies, or other governmental bodies. This Order is based upon the expectation that the terms and conditions of any necessary permits will be issued consistent with the response actions required by this Order.

B. Nutting shall notify the MPCA Commissioner of all non-MPCA permits which are needed to implement the requirements of this Order as soon as Nutting becomes aware of the need for the permit. Nutting shall provide the MPCA Commissioner with a copy of all such permit applications at the time the application is submitted to the governmental body issuing the permit.

C. If a permit is not issued, or is issued or is renewed in a manner which is materially inconsistent with the requirements of the approved RAP or RA(s), Nutting shall notify the MPCA Commissioner of its intention to propose modifications to the RAP or RA(s). Notification by Nutting of its intention to propose modifications shall be submitted within seven (7) calendar days of receipt by Nutting of notification that (1) a permit will

not be issued; (2) a permit has been issued or reissued; or (3) a final judicial determination with respect to issuance of a permit has been entered. Within thirty (30) days from the date it submits its notice of intention, Nutting shall submit to the MPCA Commissioner its proposed modifications to the RAP or RA(s) with an explanation of its reasons in support thereof.

D. The MPCA Commissioner shall review and approve, disapprove or modify Nutting's proposed modifications to the RAP or RA(s) in accordance with Part VII of this Order. If Nutting submits proposed modifications prior to a final judicial determination of any appeal taken on a permit needed to implement this Order, the MPCA Commissioner may elect to delay review of the proposed modifications until after such final judicial determination is entered. If the MPCA Commissioner elects to delay review, Nutting shall continue implementation of this Order as provided in Paragraph E of this Part.

E. During any judicial review of any permit needed to implement this Order or during review of any of Nutting's proposed modifications as provided in Paragraph D above, and during any subsequent judicial proceedings taken in accordance with the provisions of Part VIII, Nutting shall continue to implement those portions of the RA(s) which the MPCA Commissioner determined can be reasonably implemented pending final resolution of the judicial proceedings.

X.

Creation or Danger

In the event the MPCA Commissioner determines that activities undertaken in implementing or in non-compliance with this Order, or any other circumstances or activities, are creating a danger to the health or welfare of the people on the Nutting Site or in the surrounding area or to the environment, the MPCA Commissioner may order Nutting to stop further implementation of this Order for such period of time as needed to abate the danger or may petition a court of appropriate jurisdiction for such an order.

XI.

Reporting

Nutting shall submit to the MPCA Commissioner written progress reports which describe the actions Nutting has taken during the previous three months (quarter) to implement the requirements of this Order. Progress reports shall also describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall be submitted within ten days from the end of each quarter. The progress reports shall include a detailed statement of the manner and extent to which the requirements and time schedules set out in Exhibit A to this Order are being met. Nutting shall indicate and propose in the quarterly reports any additional activities it believes to be necessary which are not included in the approved RAP and shall describe the impact of the

additional activities on the other activities conducted pursuant to this Order. The MPCA Commissioner may, in his discretion, direct that reports be submitted at extended intervals or that no further reports be submitted.

XII.

Notification

Unless otherwise specified, progress reports and any other Submittals made by Nutting pursuant to this Order shall be sent by certified mail, return receipt requested and addressed or hand delivered to:

Frank X. Wallner, Project Manager
Division of Solid and Hazardous Waste
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Documents sent to Nutting shall be addressed as follows unless Nutting specifies otherwise:

Mr. Stewart Shaft
The Nutting Company
840 Hidden Valley
Watertown, South Dakota 57201

Becky A. Comstock
Dorsey & Whitney
2200 First Bank Place East
Minneapolis, Minnesota 55402

XIII.

Project Managers

The MPCA and Nutting shall each designate a Project Manager and Alternate (hereinafter jointly referred to as Project Manager) for the purposes of overseeing the implementation of this

Order. Within ten (10) days of the effective date of this Order, Nutting shall notify the MPCA Commissioner of the name and address of its Project Manager and Alternate. The MPCA Project Manager is Frank X. Wallner; the MPCA Alternate is Sandra Forrest. Either party may change its designated Project Manager by notifying the other party, in writing, of the change. To the maximum extent possible, communications between Nutting and the MPCA concerning the terms and conditions of this Order shall be directed through the Project Managers. Each Project Manager shall be responsible for assuring that all communications from the other Project Manager are appropriately disseminated and processed.

For the purpose of overseeing and implementation of this Order, the Project Managers shall have the authority to (1) take samples or direct that samples be taken; (2) direct that work stop for a period not to exceed 72 hours whenever a Project Manager determines that activities at the Nutting Site may create a danger to public health or welfare or the environment; (3) observe, take photographs and make such other reports on the progress of the work as the Project Manager deems appropriate; (4) review records, files and documents relevant to this Order; and (5) make or authorize minor field modifications in the RA(s) or in techniques, procedures or design utilized in carrying out this Order which are necessary to the completion of response actions. Any field modifications shall be approved orally by both Project Managers. Within seventy-two (72) hours following the modification, the

Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefor and shall provide or mail a copy of the memorandum to the other Project Manager.

The MPCA and Nutting Project Managers shall either be on-site or available on call during all hours of work at the Nutting Site. The absence of any Project Manager from the Nutting Site shall not be cause for stoppage of work.

XIV.

Sampling and Data Availability

The MPCA Commissioner and Nutting shall make available to each other the results of sampling, tests or other data generated by either party, or on their behalf, with respect to the implementation of this Order. At the request of the MPCA Project Manager, Nutting shall allow split or duplicate samples to be taken by the MPCA during sample collection conducted during the implementation of this Order. Nutting's Project Manager shall endeavor to notify the MPCA Project Manager not less than ten (10) days in advance of any sample collection. If it is not possible to provide ten (10) days prior notification, Nutting shall notify the MPCA Project Manager as soon as possible after becoming aware that samples will be collected.

XV.

Retention of Records

Nutting shall preserve for a minimum of three (3) years after termination of this Order all records and documents in its

possession or in the possession of its divisions, employees, agents, accountants, contractors or attorneys which relate in any way to the presence of hazardous substances at the Nutting Site or to the implementation of this Order despite any document retention policy to the contrary.

XVI.

Access

The MPCA or its authorized representatives shall have authority to enter the Nutting Site at all reasonable times for the purposes of inspecting records, operating logs, contracts and other documents relevant to implementation of this Order; reviewing the progress of Nutting in implementing this Order; conducting such tests as the MPCA Commissioner or MPCA Project Manager deem necessary; and verifying the data submitted to the MPCA by Nutting. If records required to be retained under this Order are kept at a location other than the Nutting Site, the MPCA or its authorized representatives shall have access to such other location at all reasonable times for the purposes of inspecting the records. Nutting shall honor all reasonable requests for such access by the MPCA conditioned only upon presentation of proper credentials.

Nutting shall use its best efforts to obtain access to property not owned by Nutting upon which Nutting, its contractors, and the MPCA will be required to enter or conduct work in order to carry out the terms of this Order. Nutting shall be responsible

for restoring to substantially its original condition any property to which access has been granted. Access agreements obtained by Nutting under this Part shall provide authority for Nutting and its assigns, the MPCA, and their authorized employees, agents or representatives to enter the Nutting Site and all other property upon which work is to be done under this Order at all reasonable times for the purposes of: implementing the RAP; reviewing the progress of implementation of the RAP; conducting such tests as the MPCA Commissioner or his Project Manager or Nutting's Project Manager deem necessary; and verifying data submitted.

With respect to property upon which monitoring wells, pumping wells, or treatment facilities or other response actions are located the access agreements shall also provide that no conveyance of title, easement, or other interest in the property shall be consummated without provision for the continued operation of the monitoring wells, pumping well or treatment facilities or other response actions installed on the property pursuant to this Order. Access agreements shall also provide that the owners of the property subject to the access agreement shall notify Nutting and the MPCA Commissioner, by certified mail, prior to any conveyance of the property, of the owners' intent to convey any interest in the property and of the provisions made for continued access. No such conveyance shall occur for at least thirty (30) days after receipt of such notice.

If Nutting is unable to obtain access using its best efforts, the MPCA agrees to use its authority under the statutes and regulations it administers to assist Nutting, its contractors, employees, or assigned in obtaining access to property necessary for the implementation of this Order. If Nutting, its contractors, employees, agents or assigns shall be designated agents of the State in order to obtain access under Minn. Stat. § 115B.17, subd. 4, such designation shall be for the sole purpose of obtaining access to property for purposes of taking investigative or response actions necessary for the implementation of this Order. In the event of such designation, Nutting and its assigns shall indemnify and save and hold the State, its agents, and employees harmless from any and all claims or causes of actions arising from or on account of the performance of such investigative or response actions by Nutting, its contractors, employees, agents or assigns.

XVII.

Other Claims

Nothing herein is intended to bar or release any claims, causes of action or demands in law or equity by or against any person, firm, partnership or corporation not a signatory to this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, disposal or release of any hazardous substances at, to, or from the Nutting Site.

The MPCA shall not be held as a party to any contract entered into by Nutting to implement the requirements of this Order.

XIII.

Other Applicable Laws

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. In the event there is a conflict in the application of federal or state or local laws or regulations, the more stringent of the conflicting provisions shall apply.

XIX.

Confidential Information

Nutting may assert a business confidentiality claim covering all or part of the information requested by this Order pursuant to Minn. Stat. §§ 13.03, 13.37, 115B.17, Subd. 5, and 116.075. Analytical data shall not be claimed as confidential by Nutting. Information determined to be confidential by the MPCA Commissioner shall be afforded protection as provided in Minn. Stat. Ch. 13 and §§ 115B.17, Subd. 5, and 116.075. If no such claim accompanies the information when it is submitted to the MPCA Commissioner, the information may be made available to the public by the MPCA Commissioner without further notice to Nutting.

XX.

Recovery of Expenses

Nutting shall pay into the Environmental Response, Compensation and Compliance Fund of the Treasury of the State of Minnesota the sum of Seven Thousand Dollars (\$7,000) as reimbursement of the MPCA's past (since January 1, 1987) and future expenses incurred in connection with the Nutting Site. Payment of this sum shall be ⁱⁿ full and complete satisfaction of all past monetary claims of the MPCA. Payment shall be made as follows: Two Thousand Dollars (\$2,000) within thirty (30) days of the effective date of this order; One Thousand Dollars (\$1,000) within six (6) months of the effective date of this order; Two Thousand Dollars (\$2,000) by December 31, 1988, and; Two Thousand Dollars (\$2,000) by December 31, 1989. Payments shall be sent to John Retzer, Accounting Director, and a copy of the letter which accompanied payment shall be sent to the MPCA Project Manager.

XXI.

Liability Insurance

Within 30 days of the effective date of this Order, Nutting shall provide the MPCA Director with current certificates of insurance certifying coverage for general liability with minimum limits of One Million Dollars (\$1,000,000) per occurrence, exclusive of legal defense costs, for bodily injury. The insurance coverage shall provide that it cannot be cancelled for any reason except after thirty (30) days notice to the MPCA

Commissioner. These insurance limits are not be construed as maximum limits. Nutting is solely responsible for determining the appropriate amount of insurance it should carry for injuries or damages resulting from its activities in the implementation of this Order.

XXII.

Amendment of Order

This Order may only be amended by a written agreement between Nutting and the MPCA.

XXIII.

Covenant Not to Sue

In consideration for Nutting's performance of the terms and conditions of this Order, and based on the information known to the parties on the effective date of this Order, the MPCA agrees that compliance with this Order shall stand in lieu of any administrative, legal and equitable remedies available to the MPCA regarding implementation of Nutting's Response Actions, and reimbursement of MPCA expenses, except that nothing in this Order shall preclude the MPCA from exercising any administrative, legal and equitable remedies available to it to require additional response actions by Nutting in the event that the implementation of the requirements of this Order are insufficient to remedy the release or threatened release of hazardous substances associated with the Nutting Site.

This Order shall not be construed as releasing Nutting from responsibility or liability for development and implementation of a response action plan or for any response actions, or from responsibility or liability for any matter other than those identified above, which may be required under Minn. Stat. Ch. 115B or any other law to abate or minimize the release or threatened release of hazardous substances associated with the Nutting Site.

XXIV.

Remedies of Parties

The terms of this Order shall be legally enforceable by either party in a court of appropriate jurisdiction.

Nothing in this Order shall waive the MPCA's right to enforce this Order, to take any action authorized by Minn. Stat. Ch. 115B or by any other law should Nutting fail to maintain compliance with this Order or to compel Nutting to comply with an order issued by the Commissioner under Part VIII.

XXV.

Failure to Make Timely Submittals

A. For each week that Nutting fails to make a Submittal to the MPCA Commissioner in accordance with the time schedules contained in the Exhibit to this Order or any other time scheduled approved or modified by the MPCA Commissioner, Nutting shall be obligated to pay into the Environmental Response, Compensation and Compliance Fund of the Treasury of the State of Minnesota, by

check payable to the Minnesota Pollution Control Agency, the sum of two thousand dollars (\$2,000).

B. Nutting shall not be liable for payment under this Part if it has submitted to the MPCA Commissioner a timely request for an extension of schedules under Part XXVI of this Order and such request has been granted.

C. Upon determination by the MPCA Commissioner that Nutting has failed to make a Submittal referenced herein, written notice of the failure specifying the provision of the Order which has not been complied with shall be given to Nutting. Nutting retains the right to dispute under Part VIII the factual basis for the MPCA Commissioner's determination that a Submittal has not been made in a timely fashion.

D. Payments required by this Part shall accrue from the date on which the Submittal was to have been made. Payments required by this Part shall cease to accrue when Nutting delivers the required Submittal to the MPCA Commissioner.

E. Nothing in this Part shall be construed as prohibiting or in any way limiting the ability of the MPCA to seek civil penalties available under Minn. Stat. Ch. 115B or any other law for any noncompliance with this Order except for noncompliance with the schedules for making Submittals.

XVI.

Extensions of Schedules

Extensions shall be granted if requests for extensions are submitted in a timely fashion and good cause exists for

granting the extension. All extensions must be requested by Nutting in writing. The request shall specify the reason(s) why the extension is needed. Extensions shall only be granted for such period of time as the MPCA Commissioner or MPCA Board determines is reasonable under the circumstances. A requested extension shall not be effective until approved by the MPCA Commissioner or MPCA Board.

The MPCA Commissioner may extend the time schedules contained in this order for a period not to exceed ninety (90) days except that if an extension is needed as a result of (1) delays in the issuance of a necessary permit which was timely applied for; (2) judicial review of the issuance, non-issuance or re-issuance of a necessary permit; or, (3) judicial review under Part VIII of this Order, the MPCA Commissioner may extend the time schedules for a longer period. Extensions of greater than ninety (90) days requested for reasons other than the three specified above may be granted under this Order, but only if approved by the MPCA Board pursuant to Part XXII (Amendment of Order) of this Order.

The burden shall be on Nutting to demonstrate to the satisfaction of the MPCA Commissioner or MPCA Board that the request for the extension has been submitted in a timely fashion and that good cause exists for granting the extension. Extensions shall be granted where Nutting demonstrates that the reason the extension is needed is due to:

(1) Circumstances beyond the reasonable control of Nutting, including delays caused by the MPCA;

(2) Stoppage of work under Part X (Creation of Danger) which work stoppage was not the result of any noncompliance by Nutting with this Order or the Exhibits thereto;

(3) Review resulting from the good faith invocation by Nutting of Part VIII of this Order, which review results in delays in implementation of this Order making it impossible for Nutting to meet the required schedule(s); and,

(4) Delays which are directly attributable to any changes in permit terms or conditions or refusal to issue a permit needed to implement the requirements of this Order, as contemplated under Part IX (Permits) of this Order, if Nutting filed a timely application for the necessary permit.

XXVII.

Conveyance of Title

No conveyance of title, easement, or other interest in those portions of the Nutting Site on which any containment system, treatment system, monitoring system or other response actions provided for under Exhibit A are installed or implemented pursuant to this Order shall be consummated by Nutting without provision for continued maintenance of any such system or other response actions. At least sixty (60) days prior to any conveyance, Nutting shall notify the MPCA Commissioner by registered mail of the provisions made for the continued operation

and maintenance of any response actions or system installed or implemented pursuant to this Order.

XXVII.

Financial Responsibility

Within thirty (30) days of the effective date of this Order, Nutting shall submit to the MPCA Commissioner, for review and approval, financial assurance guaranteeing performance of the work specified in Exhibit A to this Order. Financial assurance shall be in a form that meets the requirements for financial assurance for corrective action set forth at Minn. Rules Parts 7045.0514 and 7045.0524.

XXIX.

Successors

This Order shall be binding upon Nutting, its successors and assigns, and upon the MPCA, its successors and assigns.

XXX.

Termination

The provisions of this Order shall be deemed satisfied and terminated upon receipt by Nutting of written notice from the MPCA Commissioner that Nutting has demonstrated, to the satisfaction of the MPCA, that all the terms of this Order have been completed.

XXXI.

Effective Date

This Order is effective upon the date that the MPCA executes this Order.

IT IS SO AGREED:

By _____
The Nutting Company

Date

Chairperson, Minnesota
Pollution Control Agency

Date

Commissioner, Minnesota
Pollution Control Agency

Date

Minnesota Pollution Control Agency
Division of Solid and Hazardous Waste
Site Response Section

Board Action Sheet

Board Date: 9/22/87

Project Manager: Frank Wallner / Sandra Fomest Date: 9/22/87

Board Agenda Title: Request for Approval of a Response Order by Consent between the MPCA
and the Nutting Company Regarding Ground Water Contamination Associated
with the Nutting Truck & Coaster Hazardous Waste Site, Fairbault, Rice County.

Board Action:

Approved as presented: ✓

Denied

Approved with the following changes: (See attached resolution)

Tabled: Yes No If yes, until when?

Signed: Sandra J. Fomest

Dated: 9/22/87

2021 ACTION MESSENGER, Inc.

210 W. 79TH ST. MPLS., MN. 55420

881-5100



Date
8/24/87
Declared Value

Driver
70
Waiting Time

8994
Pieces

Weight

Dept./P.O. # 092364/32

B. DORSEY LAW
I. 1700 1ST BANK PLACE EAST
L O MINNEAPOLIS, MN 55402

Authorized by: Mark Kaster

F Dorsey & Whitney
R. 2200 1st Bank Place East
O Mpls., MN 55402
Mo Address

T Mr. Frank X. Wallner
O 520 Lafayette Road
Address St. Paul, MN 55155

Special Instructions:

Subject to Terms & Conditions on reverse side

Receiving Firm by: X

Richard Swanda

PLEASE CHECK ✓ SERVICE REQUIRED

DIRECT

1 HOUR

X

90 MIN.

3 HOUR

C.O.D.

NOT RESPONSIBLE
FOR VERBAL INSTRUCTIONS

CHARGES

Waiting Time		
Excess Value		
Advances		
C.O.D. Charge		
Round Trip		
Add'l Stops		
Add'l Weight		
Delivery		
TOTAL		

CONSIGNEE'S COPY

TERMS AND CONDITIONS UPON WHICH PICK-UPS AND DELIVERIES ARE MADE.

DECLARATION OF VALUE: The shipper or consignor hereby declares that unless otherwise specifically indicated, the value of no total shipment or no single piece, package, parcel, or article, in this delivery, including the contents thereof, exceeds \$50.00, upon which declaration the charge for delivery is based. Any claim in excess of the said \$50.00 is hereby released and discharged, unless a higher value is declared and applicable charges paid thereon. Carrier not liable for loss or damage for any amount greater than \$2,000.00. For value in excess of \$2,000.00 carrier must be notified.

NO LIABILITY WILL BE ASSUMED:

- A. Unless number and description of items are listed on front of this ticket.
- B. Unless each parcel and this ticket is plainly marked with correct name and address of consignee.
- C. Unless each parcel is securely wrapped or packed in containers made of material of sufficient strength and durability to insure safe transportation with ordinary care.
- D. **NOT RESPONSIBLE FOR LOSS OR DAMAGE CAUSED BY:** An act of God, public enemies, authority of law, quarantine, riots, strikes or other incidents to a state of war or rebellion against constituted authority.

Not responsible for C.O.D. collections unless amount is designated in space provided for same on front of this ticket.

Checks will be accepted at customer's risk on C.O.D.'s unless otherwise designated on the front of this ticket.

Customer must designate type of service desired by a check mark in space provided for same on front of this ticket, and published rates will be charged for same.

NO CLAIMS FOR DAMAGED GOODS ACCEPTED FIVE DAYS AFTER DELIVERY IS COMPLETED.